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IN THE

Supreme Court of the United States

CITY OF BRIDGEPORT, JEREMY DEPIETRO, Officer and CHRISTOPHER BORONA, Detective,
Petitioners,

v.

CHRISTOPHER RUSSO,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Fourth Amendment to the United States Constitution requires law enforcement officers to exhaustively investigate items of evidence identified by a suspect after an arrest based on probable cause?

2. Whether, notwithstanding an initial arrest based on a valid warrant for the correct individual and the presentment of that defendant to a court immediately after the arrest, a law enforcement officer bears a continuing duty to properly investigate and ascertain what evidence will prove to be exculpatory?

PARTIES TO THE PROCEEDING[1]

The parties to the proceedings in the Second Circuit Court of Appeals whose judgment is sought to be reviewed were: Christopher Russo, Plaintiff; the City of Bridgeport, Connecticut; Jeremy DePietro; John Rosa; Christopher Borona and John Sherbo, Defendants.

[1] No corporate disclosure statement is required by Sup. Ct. R. 29.6, as there is no non-governmental corporation as a party.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, the City of Bridgeport, Jeremy DePietro and Christopher Borona, respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals of the Second Circuit.

OPINION BELOW

The opinion of the Court of Appeals is reported as *Russo v. City of Bridgeport*, 479 F.3d 196 (2nd Cir. 2007). It is reproduced in the Appendix at 1a-27a. The opinion of the District Court (Thompson, J.) is unreported and was given from the bench at the conclusion of oral argument on Petitioners' Motion for Summary Judgment. A transcript of that hearing, including the decision of the District Court is reproduced in the Appendix at 28a-72a.

JURISDICTION

On February 27, 2007, the Second Circuit Court of Appeals entered its decision for which review is sought. The jurisdiction of this Court is involved under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

Respondent, Christopher Russo, seeks damages for the alleged violation of his constitutional rights, pursuant to 42 U.S.C. § 1983.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Respondent had claimed a violation of the due process clause of the Fourteenth Amendment to the United States Constitution, which provides that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

> deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV, § 1.

The decision of the Circuit Court of Appeals rejected that basis but found a right to exist under the Fourth Amendment to the United States Constitution. The Fourth Amendment provides that

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV.

STATEMENT OF THE CASE

Since this Court's decision in *Baker v. McCollan*, 443 U.S. 137 (1979), a number of circuit courts have had occasion to address factual patterns that went beyond the facts in that case, and where the periods of detention were sufficiently prolonged that violations of the Constitution, under the due process clause of the Fourteenth Amendment, were found sufficiently pled or proven. Typically, these prolonged detention cases under 42 U.S.C. § 1983 have involved mistaken identity cases where the claim of the detained person was simple: either they were not the person named in the warrant or, like *Baker*, the warrant had been issued based on a mistake as to the identity of the person named therein. *Baker* held that, in such situations, the initial arrest and some period of continued detention were not violations of the U.S. Constitution, but suggested a continuing failure to address the identity issue would be found to violate constitutional requirements.

This case presents a case of first impression before this Court, because it attempts to create an entirely new constitutional duty by extrapolating from *Baker*'s suggestion of constitutional limits. Here, there was no mistake in the identity of the person named in the warrant or the person arrested, the existence of probable cause for the arrest was unchallenged, the suspect had been presented to court and the continuing detention of the suspect was determined by ongoing court proceedings. This case concerns whether or not law enforcement officers have constitutional obligations to conduct post-arrest investigations in a manner that will uncover all exculpatory evidence. Based on the reasoning of the Second Circuit, law enforcement officers will shoulder personal responsibility and a continuing duty to exhaustively investigate defenses brought to their attention by the suspect, and to monitor the detention status of the suspect at all times subsequent to their arrest and presentment to judicial officials. The decision imposes liability on officers solely on the basis of how they handled a single item of evidence, a videotape of an armed robbery, the exculpatory value of which only became apparent after laboratory enhancement, which these officers had not obtained. As such, it extends the constitutional obligations of officers beyond simply assuring that every seizure of a person is based on probable cause, and it would require them to assess anew, each day, every lead or clue that a suspect could later show would have been exculpatory had it been pursued more exhaustively.

This decision presents a conflict in the decisions of the circuit courts that have addressed the existence of a continuing duty of an officer to investigate exculpatory defenses and whether an officer can become liable for subsequent incarceration over which the officer has no control. The decision also purports to find this constitutional duty already heralded by this Court's decision in *Baker* under circumstances where other circuits cite *Baker* for the opposite conclusion.

A determination of the duties law enforcement officers bear whenever a custodial arrest is made is essential to the daily conduct of thousands of officers. Our legal system has strongly encouraged officers to rely on judicial determinations as to probable cause, pretrial detention and the right of each accused to a speedy trial, but would now hold the officers responsible for how well the judicial system performs. These officers deserve a single, clear statement as to what the Constitution requires of them and whether they may continue to rely on the protection of judicial determinations. Any such imposition of additional duties on law enforcement officials will materially obstruct the day-to-day operations of state and municipal police departments throughout the nation and impede the effective ability of those officers to protect the public.

1. *The Investigation and Arrest Giving Rise to this Case.*

On August 1, 2002, a gas service and convenience store located in Bridgeport, Connecticut, was robbed by an armed, unmasked male, who fled the scene of the crime. The cashier, who was the victim of the robbery, gave a physical description of the perpetrator to police, said he would be able to identify the robber, and that there was a videotape available. (Appendix at 100a-101a.) The videotape was obtained by the Bridgeport Police Department (the "BPD") on the same day of the robbery. Due to the poor quality of the video and the condition of the tape, the investigating officers went to a local security department and obtained still photographs of the robber from the videotape. (Appendix at 124a.) Based on the facial characteristics of these photos, a police department computer selected possible matching photos from the BPD photo identification database. (Appendix at 124a.) The photo of plaintiff, Christopher Russo, was included in the eight photos selected by the computer.

When the photos were shown to the cashier, he identified the photo of Mr. Russo, stating: "He is the guy who robbed me with the gun at the Amoco Station last night. I am positive. I am one hundred percent sure." (Appendix at 101a.) Based upon this identification, the BPD sought a warrant for Mr. Russo's arrest. Detective DePietro completed the Application for Arrest Warrant, reciting in the written application the above facts and also stating that the robbery was caught on videotape, which tape was retrieved by him on the day of the robbery. (Appendix at 106a-107a.) On September 9, 2002, a judge of the Connecticut Superior Court reviewed the Application, found probable cause existed for the arrest of Christopher Russo and issued a warrant. (Appendix at 106a-107a.) Under Connecticut practice, the officer executing the warrant "shall take the accused into custody, serve a copy of the warrant upon him or her" and either release the accused on bail or bring the arrestee before the court. (Connecticut Practice Book § 36-5.)

On September 18, 2002, Mr. Russo was arrested by officers from the State/FBI Task Force at his residence without incident. (Appendix at 108a-109a.) When he arrived at the BPD, he was interrogated by Officers DePietro and Borona. The officers confronted Mr. Russo with photographs taken from the videotape showing the face of the robber and telling him that, given the photographic proof, he should confess. Mr. Russo denied his guilt. Among the several reasons offered for his innocence, Mr. Russo asked if the robber had extensive tattooing on his arms, which Mr. Russo did, and he also questioned whether he matched the physical description. During the interrogation, Mr. Russo claims the officers left the interrogation room, claimed to review the videotape and returned claiming Mr. Russo should confess, because the perpetrator had tattoos. Mr. Russo, however, did not confess. At no time prior to September 18, 2002, nor subsequent to that day, has Christopher Russo had any

contact with any of the individual officers sued. (Appendix at 5a, 124a, 126a and 127.)

On September 19, 2002, Mr. Russo was arraigned before the Superior Court and bound over for trial. Due to his prior criminal record, and the pendency of other charges, his bail was set at $100,000, and he was detained due to his inability to post bail. (Appendix at 117a-118a.)

Even before Mr. Russo's first court appearance on September 19, 2002, the day after his arrest, Mr. Russo had advised his appointed public defender of the existence of the videotape and his belief it would exonerate him. (Appendix at 6a.) Within weeks, his now retained private counsel was also told about the videotape. (*Id.*)

On November 19, 2002, an investigator with the State's Attorney's office went to the BPD's property room to obtain the videotape. The investigator found the tape had not been logged into the evidence room but was locked in a desk drawer of the lead investigating officer, Officer DePietro. Sometime after November 25, 2002, the investigator obtained the tape from Officer DePietro and reviewed it. Because the investigator determined he could not see the perpetrator clearly, on January 3, 2003, he requested laboratory enhancement of the videotape which was received about January 23, 2003. (Appendix at 112a). After January 23, 2003, the enhanced videotape was made available to Mr. Russo's counsel who viewed it and reported to the State's Attorney's office that his client could not be the perpetrator shown in the tape. Ultimately, the State's Attorney viewed the enhanced videotape personally and determined that the individual shown in the videotape did not have tattoos such as Mr. Russo did. The following day on April 23, 2003, on the motion of the prosecution, the court dismissed the charges.

2. *The District Court Proceedings*

Following his release, Mr. Russo brought an action under 42 U.S.C. § 1983 against the City of Bridgeport and four individual officers of the BPD, which action was removed to the District of Connecticut. Among the claims asserted were ones for false arrest, false imprisonment and violation of his civil rights under the Fourth and Fourteenth Amendments.

After discovery, all the defendants filed a motion for summary judgment that was heard by the Federal District Court on July 12, 2005. At the hearing, the Honorable Alvin W. Thompson painstakingly walked through the undisputed events leading up to the arrest of Christopher Russo and came to the conclusion that the arrest was fully supported by probable cause, duly determined by a court of law, and based on an unqualified identification by the victim, who had been face-to-face with the robber. Plaintiff's counsel concealed the existence of probable cause for the arrest (Appendix at 47a-48a.) but argued the real crux of the case was when, after the arrest and during Christopher Russo's interrogation of September 18, 2002, the BPD officers first saw his tattoos and were challenged by the suspect to determine if the man in the videotape had tattoos. (*Id.*) At that time, however, with Christopher Russo in custody, Judge Thompson asked plaintiff "who's the decision maker in terms of what happens to him." Mr. Russo's counsel said: "The court." (Appendix at 48a.)

The District Court judge found that Mr. Russo's federal constitutional rights had not been violated and dismissed the associated state law claims, declining to exercise supplemental jurisdiction. (Appendix at 72a.) The stated basis of the District Court's decision was that probable cause for the arrest had been established, precluding the false arrest and false imprisonment claims under § 1983. The District Court also concluded that there was no genuine dispute that the unenhanced videotape was insufficiently clear to exonerate

Mr. Russo (Appendix at 66a-69a.) and rejected the argument that police officers violate a suspect's constitutional right when they fail to go out and investigate a suspect's explanation as to why they are not guilty, as claimed by the suspect. For that reason, the District Court granted the motion for summary judgment by all defendants.

3. *The Decision of the Second Circuit*

Russo appealed the District Court's order granting summary judgment in favor of all defendants. The Second Circuit affirmed the summary judgment with regard to two of the four officers named as individual defendants. The Second Circuit vacated, in part, the summary judgment as to Petitioners. The Second Circuit affirmed summary judgment with regard to the claims for false arrest and false imprisonment on the basis that such claims cannot lie when the challenged arrest was supported by probable cause. The Second Circuit reversed the entry of summary judgment, however, with regard to the claim of prolonged detention due to the Petitioning officers' alleged mishandling of "exculpatory" evidence (the videotape) and failure to turn such evidence over to the prosecuting attorney. Specifically, the Second Circuit's decision held that "the right mentioned in *Baker* . . . protected Russo from a sustained detention stemming directly from the law enforcement officials refusal to investigate available exculpatory evidence." (Appendix at 18a.) The Second Circuit did not find that right on the basis of the Fourteenth Amendment's due process clause, as claimed by Russo on appeal, but rather as a right guaranteed under the Fourth Amendment's prohibition on unreasonable seizures of the person.

REASONS FOR GRANTING OF THE PETITION

A writ of certiorari is warranted in this case for several reasons. First, the decision creates a split of authority among

the circuits that have considered the underlying constitutional question of whether a law enforcement officer has a duty to continue investigating claims of innocence or a suspect's offered defenses after making an arrest based on probable cause. Several circuits have flatly rejected the duty that the Second Circuit imposes. The Second Circuit's decision also creates a continuing constitutional obligation on the part of law enforcement officers for the suspect's detention, which lies entirely beyond the officer's control. When officers execute a valid arrest warrant issued by a court of law, arrest the correct person and promptly present that individual for arraignment before the court, the court determines whether the defendant should be detained or released and on what terms and conditions. Under the Second Circuit's decision, an officer's ability to rely on the independent determination of probable cause reflected by a court issued warrant may decay over time. Not only can an arrest initially reasonable dissolve over time into an unconstitutional seizure, but that point in time will first be announced years later in a court proceeding.

Finally, the determination of the Second Circuit carries significant public policy implications, as it will impose an impossible burden on law enforcement officers and ultimately prove counterproductive. Rather than encourage officers to further investigate crimes, seek out confessions or develop leads leading to the implication or discharge of other suspects, officers will shun any information or further involvement that might some day trigger a claim that this clue was the true defense that would have resulted in the suspect's earlier release.

SPLIT OF AUTHORITY IN THE CIRCUITS

In *Baker*, this Court found a § 1983 claim against a sheriff alleging the intentional failure to investigate and determine that the wrong man was imprisoned, failed to state a

constitutional claim. *Baker*, 443 U.S. at 143-44. This Court, in dicta, however, went on to state that a misidentified suspect "could not be detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment." *Id.* at 144. Since *Baker*, the district and circuit courts have come to discern a constitutional prohibition on prolonged detention, pointing to this language as support. The decisions have come to increasingly diverge, however, and are now substantially in conflict and disagreement creating substantial uncertainty in the law enforcement community as to the responsibilities officers have under the Fourth Amendment to the United States Constitution.

The Second Circuit in this case clearly looked to *Baker* for the recognition of a constitutional right to be free from prolonged detention. The Second Circuit also relied upon several earlier decisions from circuit courts, including its own prior decision, to reach its holding.

In the first of these, *Cannon v. Macon County*, 1 F.3d 1558 (11th Cir. 1993), an officer had arrested an individual whose name matched that of a person with the same name listed on the NCIC system. Despite her protests that she was not the same person, and obvious differences in her appearance, age and identifying data, the suspect was arrested, booked, held for several days, and even extradited to another state before her claims of mistaken identity were recognized. While the Eleventh Circuit recognized the holding of *Baker*, it did not find it precluded the claim made before it, and indeed read *Baker* as recognizing "that after the lapse of a certain amount of time, continued detention in the face of repeated protests will deprive the accused of liberty without due process." *Cannon*, 1 F.3d at 1562. Ultimately, *Cannon* recognized a "constitutional right to be free from continued detention after it was or should have been known that the detainee was entitled to release." *Id.* at 1563.

Another circuit decision relied on by the Second Circuit was *Fairley v. Luman*, 281 F.3d 913 (9th Cir. 2002). *Fairley* involved a suspect arrested on outstanding warrants for his identical twin brother. Though a number of citizens established this fact, as did a court restraining order, and the officers making the arrest reported it to the booking sergeant, it was never pursued, and the suspect was held for 12 days before being released. Even though the initial arrest was based on a valid warrant, the Ninth Circuit found the continued detention to comprise a constitutional injury and found that constitutional right recognized by *Baker*.

Likewise, the Second Circuit relied upon the decision of the Fifth Circuit Court of Appeals in *Sanders v. English*, 950 F.2d 1152 (5th Cir. 1992). *Sanders* involved the arrest of a suspect based on a warrant with the strength of the prosecution's case unraveling almost immediately after the arrest. Multiple and seemingly unimpeachable witnesses to the crime vouched for the suspect's presence out of town at the time of the robbery, and a number of witnesses either could not identify the suspect or flatly stated he was not the robber. The police officers in charge of the investigation actually received this exculpatory information but then told the witnesses they did not want to hear it. The district court, relying on *Baker*, found that once Sanders was lawfully arrested, the police officer had no obligation to conduct an investigation to clear the suspect of the charges. *Sanders*, 950 F.2d at 1160. The Fifth Circuit reversed and held that this Court's decision in *Baker* did not bar Sanders' claim because the claim was not a failure to investigate claims of innocence, but rather a failure to aid in the suspect's release after the officer knew the suspect had been misidentified.

Based on these cases "recognizing" *Baker* as establishing a Fourteenth Amendment due process right to be free from continued detention after an officer knows or should have known the suspect was entitled to release, the Second Circuit

held "that the right mentioned in *Baker* and enunciated in the above cited cases protected Russo from a sustained detention stemming directly from the law enforcement officials' refusal to investigate available exculpatory evidence." (Appendix at 18a.) The Second Circuit decision, however, clearly contradicts the decisions from other circuits.

One of the clearest and most reasoned of these conflicting decisions is that of the First Circuit Court of Appeals in *Brady v. Dill*, 187 F.3d 104 (1st Cir. 1999). In *Dill*, the plaintiff was arrested on an outstanding warrant issued for him when a different individual who had impersonated Dill failed to appear for a court appearance. Officers, responding to an unrelated complaint, arrested Dill on the outstanding warrant but soon came to believe he was the victim of mistaken identity and did everything in their power to secure his release, ultimately at the time of his initial arraignment before a court of law. Though the First Circuit found the period of detention was within the limits established by *Baker* as reasonable for officers to sort out such claims of mistaken identity, it went on to discuss the principles established by *Baker* and the principles applicable in reviewing Fourth Amendment seizure and post-arrest claims. The *Dill* court noted this Court's statements in *Baker* that police officers do not have an affirmative duty to investigate every claim of innocence.[1] *Dill* also expresses grave reservations with whether police officers are being asked, in effect, to "acting unilaterally, . . . undo a judicial determination of probable cause." *Id.* at 111 n.6. The First Circuit held that when a warrant has been issued upon probable cause, police officers are not required to exercise discretion or weigh proof. Their obligations are to execute the warrant and return the suspect

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[1] *Dill* also conflicts with the decision of the Second Circuit in that the First Circuit held once the validity of the arrest is determined, the Fourth Amendment issues are resolved. *Dill*, 187 F.2d at 108. The Second Circuit's decision based its decision on the Fourth Amendment.

to a court of law. Any requirement that police officers "determine" the guilt or innocence of a suspect would "blur the usual separation of functions" between law enforcement and the judicial system. *Id.* at 112. While *Dill* noted an officer may have duties to disclose to prosecutor "known exculpatory evidence," *Id.* at 114, it noted "it is ordinarily sufficient for the police officer to bring the relevant information to the attention of the prosecutor or the proper judicial official." *Id.*

Other circuit courts have recognized that an officer has "no constitutional obligation to conduct any further investigation in the hopes of uncovering potentially exculpatory evidence" once probable cause has been determined to exist. *Eversole v. Steele*, 59 F.3d 710, 718 (7th Cir. 1995). This appears to be the same standard applied in the Sixth Circuit, which has held that while officers, pre-probable cause, cannot disregard potentially exculpatory evidence, once probable cause is established, the officer has no duty to investigate further or pursue evidence that might exculpate. *Ahlers v. Schebil*, 188 F.3d 365, 371 (6th Cir. 1999).

There is also no basis in this case to claim that this case involves known exculpatory evidence. The District Court determined that, based upon the evidence presented in support and in opposition to the motion for summary judgment, there was no genuine dispute that until the videotape was enhanced, it was not exculpatory. (Appendix at 9a, 66a-67a.) The evidence before the District Court was undisputed in this regard and there is no contention in the Second Circuit's decision that this was not the case. Indeed, in construing the evidence "in the light most favorable to Mr. Russo," (Appendix at 4a.) the Second Circuit determined that the state investigator who watched the pre-enhancement tape "determined that he could not see the perpetrator clearly," and this is what led to a request for laboratory enhancement of the footage. (Appendix at 6a.)

Thus, the sole basis for the Second Circuit's decision below was the failure of the detectives to investigate. (Appendix at 18a.) Until the tape was enhanced, the officers had no basis to know the tape could prove exculpatory, other than the denial of the suspect who had been identified, positively, by the victim of the crime.

The undisputed evidence in this case also showed the officers did nothing to hide or conceal the existence of the videotape from Mr. Russo or anyone else. Mr. Russo alleges in his complaint and in his sworn testimony submitted with regard to the motion for summary judgment that the officers disclosed to him the existence of the videotape and that a person matching his description was shown therein. (Appendix at 172a-173a.) Not only was Mr. Russo immediately told of the existence of the videotape, and that it was in the BPD's possession, the officers disclosed that to the Superior Court, as well. The documents submitted to the District Court with regard to the motion for summary judgment clearly show that the existence and location of the videotape was disclosed to the Superior Court at the time the warrant was requested (Appendix at 106a.) and under Connecticut law, a copy of the arrest warrant is provided to the defendant at the time of the arrest. Mr. Russo's sworn testimony presented to the District Court with regard to the motion for summary judgment established that Mr. Russo told his defense counsel about the existence of the videotape and how it could help exonerate him before he was even arraigned on the morning of September 19, 2002. (Appendix at 189a.) The record shows Mr. Russo's retained counsel knew within weeks of the existence of the videotape and its potential importance to the defense and, indeed, made some efforts to obtain it as part of the defense. (Appendix at 190a-191a.) What is not in dispute is that none of the Petitioners had any contact with Mr. Russo either before the date of his arrest and interrogation or subsequent thereto. They neither hid, nor failed to disclose anything to the court, to defense counsel or the State's

Attorney, but are being held fully responsible for Mr. Russo's continued detention, though they had no ability to control that detention.

It is beyond dispute that the initial arrest of Christopher Russo fully satisfied the Fourth Amendment's requirement of probable cause. The victim of the armed robbery had ample opportunity to see the face of the unmasked perpetrator who stood in close proximity to him. Still photographs, depicting as clearly as possible the face of the robber, and not portraying any extremities, were obtained as part of the investigation. By inputting some of the facial characteristics of the robber shown in the still photographs, a police department computer selected photos from the BPD's database that contained similar characteristics. Those photos were shown to the victim the same day as the robbery, and the victim provided a positive and absolute identification of Christopher Russo as the man who committed the crime. That information was brought to a neutral judge of the Connecticut Superior Court, who approved a warrant for Mr. Russo's arrest. There can be no question but that probable cause existed for the arrest. By any version of the facts or allegations, the issue of whether the videotape depicted a robber with extensive tattooing, or even permitted such a determination, was never an issue until after the arrest, when Mr. Russo showed his tattooing and questioned whether the robber had similar tattoos.

Under Connecticut law, upon issuance of the warrant, the obligation of the officers serving the warrant was to make the arrest and either release the defendant on approved conditions of bail or bring the arrestee before the court. There is no dispute that this is exactly what the officers did. Christopher Russo was arrested on September 18, 2002, and brought before the court the following morning, September 19, 2002. While the Second Circuit's decision purports to simply follow this Court's ruling in *Baker* and subsequent circuit court

decisions extending that constitutional right, in point of fact, it clearly departs from these authorities and comes into conflict with heretofore unquestioned law in this Court and other circuits.

PUBLIC POLICY

These conflicting decisions and principles of law create nightmares for law enforcement officers. In situations where a good faith investigation leads to an independent, court determination of probable cause, officers make an arrest and promptly return the accused to court, under what circumstances do they become liable for the prolonged detention of that suspect? If the officers maintain the evidence and disclose its existence to all sides, including the accused, what more must they do to satisfy the Fourth Amendment? When can officers rely on the courts to satisfy Constitutional requirements of access to exculpable evidence, speedy trials and limited pretrial detention? What right do officers have to direct the enforcement of these rights after the suspect is turned over to the Court?

These are fascinating and complex legal questions, but officers deserve clear answers to these questions.

In this case, Christopher Russo was the person identified by the victim of the crime, a warrant was issued for Christopher Russo's arrest, and Christopher Russo was in fact arrested. There was no confusion, no mistake, and no failure of due process. The only complaint by Christopher Russo, and the entire basis for the Second Circuit's decision, is that the detectives in the BPD should have conducted a better investigation, by pursuing a defense that Russo claimed would exonerate him. Such a burden will require every law enforcement officer making an arrest to either cut their case load drastically and exhaust every possible defense or just run the risk they will be second guessed any time they fail to exercise perfect judgment.

CONCLUSION

This Court should grant Certiorari to consider whether the Fourth Amendment imposes an obligation on law enforcement officers to prevent any prolonged detention that can result from their failure to investigate potentially exculpatory evidence.

Respectfully Submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
August Term, 2005

Docket No. 05-4302-cv

CHRISTOPHER RUSSO,
Plaintiff-Appellant,

v.

CITY OF BRIDGEPORT, JEREMY DEPIETRO, Officer, JOHN ROSA, Officer, CHRISTOPHER BORONA, Detective, and JOHN SHERBO, Sgt.,
Defendants-Appellees.

(Argued: May 17, 2006
Decided: February 27, 2007)

Before: KEARSE, CALABRESI, and POOLER,
Circuit Judges.

Appeal from a judgment of the United States District Court for the District of Connecticut (Thompson, J.) granting the defendants' motion for summary judgment. Affirmed in part, vacated and remanded in part.

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for Defendants-Appellees.

CALABRESI, *Circuit Judge:*

In a case of mistaken identity, Plaintiff-Appellant Christopher Russo ("Russo") was arrested and imprisoned for the armed robbery of an Amoco service station and convenience store in Bridgeport, Connecticut. Two hundred and seventeen days after his arrest—and one day after the prosecutor viewed, for the first time, Amoco's videotape of the crime—the state requested a *nolle prosequi,* and the charges against Russo were dismissed.

Russo brought this action pursuant to 42 U.S.C. § 1983 ("§ 1983"), against the City of Bridgeport ("the City") and four city police department employees—Officer Jeremy DePietro ("DePietro"), Officer John Rosa ("Rosa"), Detective Christopher Borona ("Borona"), and Sergeant John Sherbo ("Sherbo")—collectively, "the officers" or "the individual defendants-appellees." He claimed, *inter alia,* that, in violation of the Fourth Amendment, the officers and the City subjected him to false arrest and false imprisonment. He also claimed that the City and the individual defendants-appellees violated his Fourth and Fourteenth Amendment rights by keeping him incarcerated for a long time after his arrest, despite his protestations of innocence and the availability of exculpatory facts and evidence.

The district court granted summary judgment to the City and to all the individual defendants-appellees. We affirm in part, and vacate and remand in part.

BACKGROUND

On August 1, 2002, an armed, unmasked person robbed an Amoco auto service station in Bridgeport. The cashier described the criminal as a white male in his late 30s, between 5'6" and 5'8" tall, of medium build with a very short, blond crew cut. The crime was recorded on videotape by a security camera. Officer Rosa went to the scene of the incident.

Officer DePietro, who was assigned by Sergeant Sherbo to investigate the robbery, obtained the videotape of the robbery on August 1, 2002. After using a video-photo machine to freeze still photographs of the criminal, DePietro prepared a mug shot photo array by matching the assailant's facial characteristics to faces in the police photo identification database. Russo's picture was included in this line-up, and the Amoco cashier identified Russo as the robber, stating that he was "one hundred percent sure" of his identification. Based on this evidence,[1] police obtained and executed a warrant for Russo's arrest. On September 18, 2002, Russo was charged with first-degree robbery.

Unable to afford the $100,000 bail that was set, Russo remained in custody for more than seven months, until April 23, 2003, when the charges against him were dismissed. The dismissal happened because the videotape taken by the surveillance camera showed that "both sides of the perpetrator's left arm and one side of the forearm, and one side of the perpetrator's right forearm," were free of any tattoos. Russo, by contrast, had prominent tattoos on his forearms, hands, neck, and legs, and, as noted in the arresting officer's report, they were there at the time of his arrest on September 18, 2002.

Indeed, in an earlier, 2001 arrest report on file with the Bridgeport police department, individual defendant-appellee Rosa documented the existence of "King Tut," "demon-devil," and "tribal art" tattoos on Russo's two forearms, in addition to other tattoos on Russo's upper arms and legs.[2] No

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[1] The police did not conduct a live line-up, and it is undisputed that the cashier never saw a picture of Russo that included any part of his body below his face.

[2] The district court made no factual findings with respect to Russo's tattoos, and we are unable to glean from the photographic reproductions in our record whether Russo's hands were also tattooed in 2001, as they were at the time of his arrest in 2002.

evidence in the record or argument by the government suggests that Russo lacked arm tattoos on the date of the robbery or had somehow managed to mask them from the victim or the video camera's view.[3]

In addition to the distinctiveness of his tattoos, Russo's physical characteristics were different in important respects from those of the Amoco robber, as described by the cashier. At the time of Russo's arrest for that robbery, Russo was listed by the police as being a 27-year-old white male, 6'0" tall, of medium build, who weighed 200 pounds and had brown hair, but was balding. He was, therefore, younger, taller, balder, and with different colored hair than the person whom the victim had described to the police.

Construing the evidence in the light most favorable to Russo, the following events occurred during the 217-day period of Russo's custody. Upon his arrest on September 18, 2002, Russo was taken for interrogation by individual defendants-appellees DePietro and Borona, whom he had never met before. The officers questioned Russo about the robbery for two hours, seeking his confession. The officers informed Russo that they had video surveillance of him committing the robbery, and they showed him a photographic still that had been "ripped or folded" to show only the robber's head. Russo protested that he could not be the person in the photograph because of the shape of the criminal's head, nose, and

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[3] The district court's speculation—which was never suggested by any of the defendants and was unsupported by any evidence—that Russo could theoretically have covered his tattoos with make-up prior to the robbery and that the police officers may have relied upon this fact in making their judgments about handling the evidence, was inappropriate on a motion for summary judgment. *See, e.g., Baker v. Home Depot*, 445 F.3d 541, 543 (2d Cir. 2006) (restating the well-settled rule that a federal court is "constrained, in reviewing a ruling on a motion for summary judgment, to resolve all ambiguities and draw all inferences in favor of [] the nonmoving party").

hairline. He also told the officers to watch the videotape to see whether the perpetrator had body tattoos.[4] The officers left the interrogation room and returned a while later holding a magnifying glass and a ruler. They then informed Russo that the videotape showed a perpetrator with tattoos. Russo, nevertheless, refused to plead guilty to the robbery.

After the questioning, DePietro came to Russo's holding cell one or two additional times seeking a confession in exchange for giving Russo access to the hospital methadone program.[5] The officers "kept on dismissing" the issue of his tattoos. Russo also continued to press the other differences between his and the perpetrator's face and insisted that this showed his innocence.

From the day of the robbery through a date after November 25, 2002, DePietro, who was the lead investigating officer on the robbery, had possession of the videotape. DePietro and Borona stated that they viewed the videotape, and testified that they "did not notice tattoos" on the perpetrator. Individual defendant Sherbo, the sergeant who had assigned DePietro to investigate the robbery, attested that he did not watch the videotape, because, in his view, the eyewitness identification confirmed the assailant's identity and made it unnecessary to view the surveillance footage. There is no dispute that after the date of the interrogation, there was no further contact between Russo and DePietro and Borona.

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[4] In his deposition, Russo testified that he raised the issue of his tattoos immediately with the officers after learning of the videotape showing the robber, "[b]ecause being into tattoos the way I am, the first thing about me that makes me original is my tattoos."

[5] At the time of the interrogation, Russo was experiencing early signs of substance withdrawal, specifically, aching in his knees. He testified, however, that [he] was very clear in everything [he] saw and said that day."

After learning of the videotape through the questioning, and believing—based on the officers' representations—that the robber had tattoos of the same size and location as he did, Russo told his appointed attorney and later his retained counsel that he wished to prove his innocence by seeing the tape of the robbery in order to compare his own tattoo imagery to that of the perpetrator. At Russo's first court appearance for arraignment and bond-setting on September 19, 2002, Russo's appointed public defender did not raise the issue of the videotape to the judge.

At a hearing before the state court, likely to have occurred in early October, the prosecutor successfully countered Russo's lawyer's request that the court compare Russo's tattoos to those of the perpetrator.[6] On November 1, 2002, Russo's counsel moved for the production of any exculpatory material, and it is undisputed that the videotape was not produced at this time. On December 2, 2002, Russo's trial attorney issued a written letter in which he specifically asked to view the tape.

On November 19, 2002, an investigator for the Office of the State Attorney visited the Bridgeport Police Department property room to obtain the videotape. The investigator found that the tape was missing. Sometime after November 25, 2002, the investigator obtained the tape from Officer DePietro, who had it locked in a drawer of his desk. Later, the state investigator watched the tape and determined that he could not see the perpetrator clearly. On January 3, 2003, he requested a laboratory enhancement of the footage, which he received on January 22, 2003.

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[6] Neither party submitted a transcript of this proceeding, but Russo testified that his parents heard Russo's trial attorney requesting the tape when Russo was not in the courtroom. This testimony was not challenged by the defense.

Later, at an unknown date before April 9, 2003, Russo's trial attorney was finally allowed to watch the tape. Immediately thereafter, he told the state investigator that the person on the tape could not be his client. The videotape was not actually surrendered to the defense until Russo was released in late April, 2003.

The state attorney was aware of Russo's "fairly vivid tattoos on his arms as well as on his neck" from the time he first received the case. Yet, because Russo's face resembled the robber's in photo stills taken from the videotape, his office claimed to have been convinced that Russo was the perpetrator until one day before seeking dismissal of the case. Finally, on April 22, 2003, due to defense counsel's continuing "insistence" on Russo's innocence, the prosecutor actually watched the videotape. The following day, after checking with a probation officer to verify that Russo's tattoos predated the crime, the state requested a *nolle prosequi.*

At the hearing to request dismissal of the prosecution, the state attorney noted that "often the less said is better", but he stated:

> So, I had a talk—to sit down with a couple of investigators yesterday to actually view the videotape in the thought that perhaps the videotape gave somehow somewhat of a better view of the perpetrator than the stills that had been developed from the videotape. That, in fact, happened. The videotape shows both sides of the perpetrator's left aim and one side of the forearm, and one side of the perpetrator's right forearm. And there very clearly are no tattoos on any of those.

The court dismissed the case.

As recognized by the district court, the Bridgeport Police Department had exclusive custody of the videotape evidence from August 1, 2002 until at least November 26, 2002, a period of 117 days. Construing the evidence in the light most

favorable to the nonmoving party, the record indicates a 68-day time period—between the police interrogation on September 18, 2002 and the earliest date on which the tape may have been obtained from DePietro—during which DePietro and Borona were on notice of Russo's claim of innocence based on his tattoos. The state attorney himself did not watch the videotape as moving picture footage, rather than frozen stills, until more than seven months after Russo's arrest.

Naming the City and the individual officers who conducted his arrest and investigation as defendants, Russo filed a civil rights action in state court. The action was removed to the federal district court on October 17, 2003. Russo there filed a second amended complaint which asserted a failure to train and supervise by the City, as well as false arrest and unreasonably lengthy detention by the City and by the individual defendants. The complaint alleges that both the City and the individual defendants-appellees lacked probable cause for Russo's arrest, demonstrated reckless and malicious indifference to Russo's claims of innocence, and failed to meet their statutory obligation under Connecticut law to disclose exculpatory evidence. In addition to his § 1983 count, Russo claimed false arrest, false imprisonment, negligent infliction of emotional distress, and intentional infliction of emotional distress under state law.

By a brief endorsement order and final judgment dated July 13 and July 14, 2005, the district court granted summary judgment to all the defendants. The court found that Russo's federal constitutional rights had not been violated, and, having dismissed Russo's federal claims, the court declined to exercise supplemental jurisdiction over Russo's state claims.

At oral argument, the district judge expressed his sympathy for Russo given the length of his wrongful incarceration, but he found no Fourth or Fourteenth Amendment violations. He stated that probable cause for Russo's arrest had been established, and that this fact precluded false arrest and false

imprisonment claims under § 1983. With respect to Russo's due process claims, the district court did not make specific factual findings about the timing or scope of the state's investigation of the crime or videotape evidence. He did conclude, however, that the evidence was insufficient to show that the videotape was legible enough to exonerate Russo prior to the tape's enhancement in January, 2003. The court went on to reject, as a matter of law, the argument that "when the person whose's [sic] been arrested provides an explanation as to why they're not guilty, the police officers violate that person's constitutional rights when they don't go out and investigate the claims made by the person who's been arrested." Having found no violation of Russo's federal constitutional rights by the individual defendants, the district court rejected the claims against the City without discussion.

DISCUSSION

I. Standard of review

"'We review a grant of summary judgment *de novo*, construing the record in the light most favorable to the non-moving party" *Hoyt v. Andreucci*, 433 F.3d 320, 327 (2d Cir. 2006) (quoting *Bourdon v. Loughren*, 386 F.3d 88, 92 (2d Cir. 2004)). We will affirm the district court's grant of summary judgment only if, taking all of plaintiff's evidence as true and drawing all inferences in plaintiff's favor, we find that no reasonable juror could conclude that Russo has established that the defendants violated his constitutional rights under circumstances subjecting them to liability under § 1983. *See Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 122-23 (2d Cir. 2004); Fed. R. Civ. P. 56(c).

II. Deprivation of constitutional rights

As in any § 1983 case on summary judgment, we first determine whether, "[t]aken in the light most favorable to the party asserting the injury, [] the facts alleged show the [defendants'] conduct violated a constitutional right," *Saucier*

v. Katz, 533 U.S. 194, 201 (2001); *see also Farrell v. Burke*, 449 F.3d 470, 499, n.14 (2d Cir. 2006) (quoting same), and only thereafter consider whether qualified immunity shields individual defendants. Russo argues constitutional tort liability arising under the Fourth and Fourteenth Amendments. He asserts that his lengthy detention and the withholding of the videotape from state investigators constituted violations of his right to be free from unreasonable seizures and of his right to due process.[7]

A. The Fourth Amendment claim based on false arrest and false imprisonment

Russo's first claim relies on theories of false arrest and false imprisonment. In analyzing claims alleging the constitutional tort of false arrest, "we have generally looked to the law of the state in which the arrest occurred." *Davis v. Rodriguez*, 364 F.3d 424, 433 (2d Cir. 2004) (examining Connecticut law to assess a plaintiff's false arrest claim); *see also, e.g., Jaegly v. Couch*, 439 F.3d 149, 151-52 (2d Cir. 2006) (considering New York law). This follows our normal practice with respect to § 1983 claims. *See Davis*, 364 F.3d at 433 n.7.

In a false arrest action, Connecticut law places the burden of proving an unlawful arrest on the plaintiff. *Beinhorn v. Saracen*, 23 Conn. App. 487, 491, 582 A.2d 208, 210 (1990); *Davis*, 364 F.3d at 433. And, in Connecticut, a false arrest claim cannot lie when the challenged arrest was supported by probable cause. *Beinhorn*, 23 Conn. App. at 491, 582 A.2d at 210. Interpreting an analogous rule under New York law in the context of federal civil rights actions, our court has uniformly rejected Fourth Amendment false arrest claims premised on lawful arrests supported by probable cause. *See*

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[7] Russo has abandoned his Sixth Amendment speedy trial claim on appeal. *See* Fed. R. App. P. 28(a)(9)(A) (the appellant's brief "must contain . . . appellant's contentions and the reasons for them").

Escalera v. Lunn, 361 F.3d 737, 743 (2d Cir. 2004); *Weyant v. Okst*, 101 F.3d 845, 852 (2d Cir. 1996); *Singer v. Fulton County Sheriff*, 63 F.3d 110, 118 (2d Cir. 1995). In the present case, the district court properly found that there was no disputed issue of material fact that Russo's arrest was supported by probable cause (the positive identification by the gas station cashier).

The more vigorous dispute between the parties—but an equally well-settled issue under Connecticut law—is whether Russo's on-going detention supported an independent § 1983 claim for false imprisonment. As in the case of false arrest, we look to Connecticut state law principles to determine the validity of Russo's federal civil rights claim based on false imprisonment. *See Huang v. Johnson*, 251 F.3d 65, 75 (2d Cir. 2001).

Under Connecticut law, "'[f]alse imprisonment, or false arrest, is the unlawful restraint by one person of the physical liberty of another.'" *Outlaw v. City of Meriden*, 43 Conn. App. 387, 392, 682 A.2d 1112, 1115 (1996) (quoting *Green v. Donroe*, 186 Conn. 256, 267, 440 A.2d 973, 974 (1982)). In *Outlaw*, the Connecticut Appellate Court stated that the applicable law for false arrest and false imprisonment "is identical," and therefore "there is no cause of action for false imprisonment if the plaintiff was arrested pursuant to a facially valid warrant."[8] *Id.* at 1115 (describing the continuity of this rule across 180 years of case law); *see also Lo Sacco v.*

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[8] Indeed, in *Outlaw*, the Connecticut court of appeals considered the false imprisonment/false arrest claim of a plaintiff who, like Russo, was arrested based on an uncontested warrant, but who was ultimately relieved from charges following exculpatory revelations on the eve of trial. *Outlaw*, 682 A.2d at 1113-14. The court found that in the context of a legally authorized arrest, a plaintiff must show that a state actor misused the "legal process to effect a valid arrest for an improper purpose." *Id.* at 1115 (internal quotation marks omitted). In other words, the plaintiff had to have made a malicious prosecution claim. This Russo has not done.

Young, 20 Conn. App. 6, 20, 564 A.2d 610, 617 (1989) (stating that a claim for false imprisonment may not lie where "the arrest of the plaintiff is legally authorized"); *Love v. Town of Granby*, 2004 WL 1683159, at *4 (D. Conn. July 12, 2004).

The district court's dismissal of Russo's § 1983 claims for false arrest and false imprisonment is therefore affirmed.[9]

B. The claim based on an unreasonably prolonged detention

The heart of Russo's second claim is that his prolonged detention—caused by the individual defendants-appellees' alleged mishandling of exculpatory evidence and failure to turn that evidence over to the prosecuting attorney which, in

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[9] Based on our conclusion that Russo did not make the requisite showing that his arrest lacked probable cause, we need not decide whether a *nolle prosequi* in Connecticut is *a per se* bar to a § 1983 claim of false arrest. On the one hand, we have stated that "[a] person who thinks there is not even probable cause to believe he committed the crime with which he is charged must pursue the criminal case to an acquittal or an unqualified dismissal, or else waive his section 1983 claim." *Roesch v. Otarola*, 980 F.2d 850, 853 (2d Cir. 1992). However, several years later, when we discussed *Roesch v. Otarola* and its Connecticut precedent, we indicated that a judgment of *conviction* was a *defense* to a claim of either malicious prosecution or false arrest, and then went on to say that we were "not aware of any opinion by Connecticut's highest court addressing the issue of favorable termination in the context of a claim for false arrest where there has been *no determination as to guilt*." *Weyant*, 101 F.3d at 853 (emphasis added). The apparent tension between these decisions, and their applicability in the context of Connecticut's procedures for entering a *nolle prosequi* specifically, has been the source of disagreement among district judges in this circuit. *Compare, e.g., Holman v. Cascio*, 390 F. Supp. 2d 120, 125-26 (D. Conn. 2005) (holding that the context of the prosecutor's decision to enter a *nolle* matters, and that such a decision does not, *per se*, preclude initiation of a false arrest suit in federal court) *with Birdsall v. City of Hartford*, 249 F. Supp. 2d 163, 171 (D. Conn. 2003) (holding that a prosecution resulting in a *nolle* is not a favorable termination for the purpose of a false arrest claim).

turn, prevented the prosecutor from complying with his duty to give the exculpatory evidence to the defense—violated his Fourteenth Amendment right to be free from deprivations of liberty without due process of law. As he did before the district court, Russo argues that the officers willfully mishandled and suppressed two items of exculpatory evidence: (1) the 2001 arrest file showing Russo's prominent tattoos and (2) the moving footage of the surveillance videotape demonstrating that the perpetrator was not tattooed. In addition, Russo asserts municipal liability by the City of Bridgeport on the theory that a failure to train and supervise these officers led to the deprivations of Russo's constitutional rights.

1. Individual defendants

To hold individual defendants-appellees DePietro, Borona, Sherbo, and Rosa liable in their personal capacity, Russo must show that their conduct violated his constitutional rights and that their actions were taken under color of state law. *See* 42 U.S.C. § 1983; *Hafer v. Melo*, 502 U.S. 21, 25 (1991); *Eagleson v. Guido,* 41 F.3d 865, 872 (2d Cir. 1994). To make such a "personal" claim, Russo need not establish a connection to governmental "policy or custom." *Hafer*, 502 U.S. at 25.

To prevail on this claim, Russo must establish (1) that he has a right to be free from continued detention stemming from law enforcement officials' mishandling or suppression of exculpatory evidence, (2) that the actions of the officers violated that right, and (3) that the officers' conduct "shocks the conscience," *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). In addition, even if Russo proves these elements, he cannot prevail against the individual defendants if the officers establish that they are entitled to qualified immunity.

In the following subsection (a), we address the three elements of this claim and conclude that Russo has made out a

prima facie case with respect to Officer DePietro and Detective Borona. In doing so, we clarify that this type of claim, which has in the past been treated as one based on substantive due process, should be examined under the Fourth Amendment instead. In subsections (b) and (c), we conclude that summary judgment was appropriate as to Sergeant Shero and Officer Rosa. Given these conclusions, subsection (d) examines whether Officer DePietro and Detective Borona are entitled to qualified immunity.

a. Officer DePietro and Detective Borona

Undisputed evidence shows that both DePietro and Borona had responsibility for investigating the Amoco robbery, with Borona accompanying DePietro to the service station on the date of the crime. Similarly, that evidence establishes that DePietro took control of the surveillance tape on the date of the robbery, viewed the tape, prepared photographic stills from the tape, served as the affiant in the warrant for Russo's arrest, obtained that warrant, and retained the original videotape in his desk drawer through a date that was after November 25, 2002.

Beyond that, the testimony in the case diverges. But read in the light most favorable to Russo, as it must be, the record evidence shows the following. DePietro and Borona questioned Russo and pursued follow-up discussions in which they learned—not necessarily for the first time, as such attributes were on record in police files—of Russo's distinctive physical characteristics, and specifically of his tattoos. They watched the unenhanced surveillance tape, and they represented to Russo that they could see the perpetrator's arms. Then, while concealing the tape, they falsely insisted that it showed a man with tattoos like his. Rather than following police rules on the storage of evidence and the processing of exculpatory evidence, DePietro put the tape in his drawer, thus impeding the state attorney's access to the footage. As a result, and despite Russo's repeated attempts to

focus attention on the tape, it took more than six months for that tape to reach Russo's counsel, and more than seven months before Russo was released from prison.

The question of whether such conduct amounted to a deprivation of Russo's constitutional rights is similar to one posed to the Supreme Court in *Baker v. McCollan*, 443 U.S. 137 (1979), in which a plaintiff was arrested pursuant to a valid warrant actually intended for his brother.[10] *Id.* at 143. The plaintiff remained incarcerated for eight days—despite his protests of innocence and the availability of exculpatory evidence—until the police compared his photograph to that of the wanted man and released the innocent arrestee. *Id.* at 141. The plaintiff brought an action pursuant to § 1983 alleging that the sheriff had failed to institute proper identification procedures in violation of the plaintiff's due process rights. As in Russo's case, the plaintiff's claims were based on law enforcement's conduct after the plaintiff was incarcerated pursuant to a valid warrant.

In *Baker*, the Supreme Court held that the plaintiffs situation—which it found was a "depriv[ation] of his liberty for a period of days" pursuant to a warrant satisfying Fourth Amendment standards—did not, in the circumstances of that case, give rise to a constitutional claim. *Id.* at 144. The Court stated, however: "Obviously, one in [plaintiff's] position could not be detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment." *Id.* at 144. Such protection derived from his constitutional right to a speedy trial. *Id.* (citing *United States v. Marion*, 404 U.S. 307 (1971)). But, going beyond this Sixth Amendment right, the Court suggested that such a

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[10] The plaintiff's brother, rather than the police, precipitated the mix-up by identifying himself as the plaintiff in the course of the crime and subsequent proceedings. *See Baker*, 443 U.S. at 140-41.

prolonged detention could also be understood in terms of the Fourteenth Amendment right to due process of law:

> We may even assume, *arguendo*, that, depending on what procedures the State affords defendants following arrest and prior to actual trial, mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of "liberty . . . without due process of law."

Id. at 145 (quoting U.S. CONST. amend. XIV, § 1); *see also Wright v. Smith*, 21 F.3d 496, 499 n.1 (2d Cir. 1994) (quoting same). The Court made clear, however, that the plaintiff's detention—"three days over a New Year's weekend"[11]—amounted to no such deprivation. *Baker*, 443 U.S. at 145.

In a concurring opinion, Justice Blackmun reinforced the Court's due process discussion. He explained that, as he saw it, the majority opinion did not "foreclose the possibility that a prisoner in [plaintiff's] predicament might prove a due process violation by a sheriff who deliberately and repeatedly refused to check the identity of a complaining prisoner against readily available mug shots and fingerprints." *Id.* at 148 (Blackmun, J., concurring). In other words, the due process clause might well reach conduct more shocking than that of the defendant in *Baker*. And, Justice Blackmun read the Court's opinion to "conclude[] only that 'every' claim of innocence need not be investigated independently," and that defendant's intent was "relevant to the existence of a constitutional violation." *Id.*

Following *Baker*, the Eleventh Circuit recognized a Fourteenth Amendment due process right "to be free from continued detention after it was or should have been known that

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[11] Plaintiff was incarcerated for a total of eight days, but spent only three days in the custody of the defendant sheriff.

the detainee was entitled to release." *See Cannon v. Macon County*, 1 F.3d 1558, 1563 (11th Cir. 1993). In *Cannon*, a sheriff's deputy arrested an innocent woman whose name was similar to that of a fugitive and ignored the arrestee's protestations of innocence. *Id.* at 1560-61. The deputy's failure to take any steps to identify the plaintiff as the fugitive, the court held, provided sufficient evidence from which a jury could find that the deputy acted with deliberate indifference towards the plaintiff's due process rights. *Id.* at 1564. Similarly, the Ninth Circuit applied *Baker*'s recognition of a due process interest to a twelve-day detention of a plaintiff arrested on valid warrants intended for his twin brother. *See Fairley v. Luman*, 281 F.3d 913, 918 (9th Cir. 2002). The court held that the plaintiff "had a liberty interest in being free from a twelve-day incarceration without any procedural safeguard in place to verify the warrant he was detained on was his and in the face of his repeated protests of innocence." *Id.; see also Sanders v. English*, 950 F.2d 1152, 1162 (5th Cir. 1992) (holding that the failure to release a pretrial detainee after police officer knew or should have known that plaintiff had been misidentified gives rise to cause of action under § 1983).[12]

And our own court has recognized the due process protection suggested in *Baker*. Thus, in *Satchell v. Dilworth*, we considered the claims of a plaintiff who, following completion of a criminal sentence, had been illegally rearrested and incarcerated for thirty-one days based on misleading and incomplete, if not deliberately false, information provided by state correctional services. 745 F.2d 781, 782 (2d Cir. 1984).

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[12] Likewise the Seventh Circuit, having acknowledged "the general proposition that a warrantless arrest does not support a claim under § 1983 if the arresting police had probable cause," went on to say that this "general rule [] does not preclude *all* § 1983 actions for wrongful detentions that follow constitutional arrests." *Sivard v. Pulaski County*, 959 F.2d 662, 665 (7th Cir. 1992).

The plaintiff, we stated in *Satchell*, might be able to prevail on his due process claims if he could demonstrate that any of the defendants intentionally[13] concealed or conspired to conceal evidence of the plaintiff's completion of his sentence.. *Id.* at 785.

Today, we hold that the right mentioned in *Baker* and enunciated in the above cited cases protected Russo from a sustained detention stemming directly from the law enforcement officials' refusal to investigate available exculpatory evidence. The Bridgeport police officers retained sole custody of the videotape evidence—and stored it in an improper manner—for a full 68 days after Russo alerted them that examining the pictures of the perpetrator for tattoos could exonerate Russo. They did this after intentionally misstating that the robber *had* tattoos. Moreover, their failure to perform the simple task of checking the tape resulted in all of Russo's 217-day incarceration.

We must clarify the source of this right, however. Although Justice Blackmun in *Baker*—and several circuits including our own in *Satchell*—have suggested that the right was rooted in substantive due process, we now conclude, in light of more recent guidance from the Supreme Court, that the right should instead be analyzed under the Fourth Amendment. In *Graham v. Connor*, 490 U.S. 386 (1989), decided almost ten years after *Baker*, the Supreme Court stated that "[w]here a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of "substantive due process," must be the guide for analyzing these claims.'" *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (plurality opinion) (quoting *Graham*,

[13] As discussed *infra*, *Satchell*'s holding that the plaintiff could also prevail by proving that his unlawful incarceration resulted from negligence has been revisited in light of Supreme Court precedent. *See O'Connor v. Pierson*, 426 F.3d 187, 203 (2d Cir. 2005).

490 U.S. at 395)). And more recently, in *County of Sacramento v. Lewis*, 523 U.S. 833 (1998), the High Court noted that *Rochin v. California*, 342 U.S. 165 (1952)—a case on which Justice Blackmun had relied in *Baker* "was decided long before *Graham v. Connor* . . . and today would be treated under the Fourth Amendment, albeit with the same result." *Sacramento*, 523 U.S. at 849 n.9.

Russo's claim—which he presents as being based on substantive due process—fits comfortably under the coverage of the Fourth Amendment. We have observed that "[w]hen the accused is physically detained following arraignment, there can be no question that he has been seized within the meaning of the Fourth Amendment." *Murphy v. Lynn*, 118 F.3d 938, 944 (2d Cir. 1997); *see also County of Sacramento*, 523 U.S. at 844 ("[A] Fourth Amendment seizure [occurs] . . . when there is a governmental termination of freedom of movement through means intentionally applied." (internal quotation marks and emphasis omitted)); *Oliver*, 510 U.S. at 274 (plurality opinion) ("The Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it."). And while "we have *generally* looked to the law of the state in which the arrest occurred" in analyzing § 1983 claims based on the Fourth Amendment, *Davis*, 364 F.3d at 433 (emphasis added), the scope of the Fourth Amendment's protection against "unreasonable" seizures is, of course, not limited to state law.

Thus, since the Fourth Amendment provides a more "explicit textual source of constitutional protection," in light of *Graham*, the Fourth Amendment, rather than substantive due process, should serve as "the guide for analyzing these claims." *Graham*, 490 U.S. at 395; *cf. Fontana v. Haskin*, 262 F.3d 871, 881 (9th Cir. 2001) ("'[C]laims arising before or during arrest are to be analyzed exclusively under the fourth amendment's reasonableness standard rather than the substan-

tive due process standard . . . .'") (quoting *Reed v. Hoy*, 909 F.2d 324, 329 (9th Cir. 1990)).

We therefore treat Russo's claim as being based on the Fourth Amendment's protection against unreasonable seizures. And, doing so, we conclude, in light of (1) the length of time of Russo's wrongful incarceration, (2) the ease with which the evidence exculpating Russo—which was in the officers' possession—could have been checked, and (3) the alleged intentionality of DePietro's and Borona's behavior, that Russo has sufficiently alleged that he was unreasonably seized. In other words, the evidence Russo has proffered suffices to prevent summary judgment on Russo's claim of a Fourth Amendment violation by DePietro and Borona.

(1)

In *Baker*, the Supreme Court expressly recognized that "the lapse of a certain amount of time" is an element in assessing the existence of a constitutional encroachment. *Baker*, 443 U.S. at 145. Indeed, in one of the precedents relied on in *Baker*, the Court had stated that "[t]he consequences of prolonged detention may be more serious than the interference occasioned by arrest. Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships." *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975); *see Baker*, 443 U.S. at 143 (citing *Gerstein*). And the *Baker* Court noted that the short duration of the plaintiffs detention was central to the Court's denial of the plaintiffs claims. *See id.* at 145; *accord Davis v. Hall*, 375 F.3d 703, 718 (8th Cir. 2004); *Cannon v. Macon County*, 1 F.3d 1558, 1562 (11th Cir. 1993); *Coleman v. Frantz*, 754 F.2d 719, 724 (7th Cir. 1985). The total 217-day detention here, or even the 68-day detention between Russo's arrest and DePietro's yielding of the tape to the prosecutor, plainly was prolonged rather than short and carried constitutional implications.

(2)

Whether DePietro and Borona watched the tape before (falsely) telling Russo that the robber was tattooed, or failed to follow up on Russo's claims of innocence by refusing to watch the tape at all, their conduct easily fits the hypothetical presented in Justice Blackmun's *Baker* concurrence: that the standard for liability announced by the Court would reach an officer who "refused to check the identity of a complaining prisoner against *readily available* mug shots and fingerprints." *See Baker*, 443 U.S. at 148 (Blackmun, J., concurring) (emphasis added). An officer's duty to investigate specific, readily-verifiable claims of innocence in a reasonable time period clearly covers reviewing a surveillance camera video record of a crime, when, as here, it was an easily available piece of physical evidence.

(3)

We have said that a substantive due process claim requires more: To trigger liability, a police officer's action must "shock[] the conscience."[14] *County of Sacramento*, 523 U.S. at 846. That is, it must be "'arbitrary in the constitutional sense,' *O'Connor v. Pierson*, 426 F.3d 187, 203 (2d Cir. 2005) (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 128 (1992)). And, given our decision—following the Supreme Court's admonition in *Graham*—to treat Russo's claim under the Fourth Amendment, the "shock the con-

[14] The *Baker* majority did not evaluate whether the defendant sheriff's conduct in *Baker* "shocked the conscience. Justice Blackmun, however, did explore the issue in his concurrence. He explained that liability was rejected because "[n]othing in [the sheriff's] conduct suggest[ed] outrageousness." The sheriff, who was new to his position, could only be said to have erred in his failure to supervise adequately his deputies' conduct and there was "no indication that petitioner was aware, or should have been aware, either of the likelihood of misidentification or of his subordinates' action." 443 U.S. at 147-48.

science" requirement must now be understood as a crucial feature going to the "unreasonableness" of the seizure.

The state of mind of a government defendant is an integral aspect of any "shock the conscience" standard. Thus, we have read *County of Sacramento* to mean that while "a purpose to cause halm" might be required in a situation such as a high-speed chase, "deliberate indifference"—but not negligence—can support a finding of liability in situations where the government owes a special duty of care to those in its charge. *O'Connor*, 426 F.3d at 203.

Here, Russo was in state custody—and hence in the charge of the government—throughout the relevant proceedings. Moreover, a reasonable jury could find that DePietro actively hid the exculpatory evidence. As such, his conduct is of a different order from that of the defendant in *Baker*, where inadvertent omission, rather than an affirmative wrongdoing, led to the detention. *See* 443 U.S. at 143; *see also Whitley v. Seibel*, 613 F.2d 682, 685-86 (7th Cir. 1980) (distinguishing *Baker* and finding liability because of defendant police officers' improper behavior). In addition, by falsely describing the content of the videotape, DePietro and Borona attempted to evoke a confession from him by misrepresenting the very evidence of Russo's innocence that was available to them. This act, combined with their failure to investigate the tape to see if the tape was in fact exculpatory, would readily support a jury finding of either intentional violation of, or deliberate indifference to, Russo's constitutional rights. *See Cannon*, 1 F.3d at 1564 (holding that a defendant's failure to verify that an arrestee was the fugitive sought on the arrest warrant raised a question of fact as to defendant's deliberate indifference toward the plaintiff's due process rights). And, DePietro's failure to follow police procedures with respect to the storage of the exculpatory evidence adds further evidence on the basis of which a jury could find deliberate indifference to Russo's incarceration and to his asserted innocence.

The evidence of shocking conduct on the part of DePietro and Borona was sufficient to preclude a grant of summary judgment in their favor on the merits of Russo's "unreasonable seizure" claim.

b. Sergeant Sherbo

Sherbo, for his part, took DePietro's oath for Russo's arrest warrant application, assigned and supervised DePietro's investigation, and made the determination that it was unnecessary to view the tape personally. Sherbo may not be held liable simply because one or more of his subordinates committed a constitutional tort. "[He] may be found liable [, however, for any] deliberate indifference to the rights of others by his failure to act on information indicating unconstitutional acts were occurring or for his gross negligence in failing to supervise his subordinates who commit such wrongful acts, provided that the plaintiff can show an affirmative causal link between the supervisor's inaction and [his] injury." *Poe v. Leonard*, 282 F.3d 123, 140 (2d Cir. 2002). But no evidence was proffered that Sherbo was on notice of Russo's tattoo-based claim of innocence. As a result, no deliberate indifference by Sherbo to Russo's rights has been shown. Similarly, Sherbo's conclusion that the robbery victim's positive identification precluded the need for watching the videotape—standing alone—is in no sense arbitrary, let alone shockingly so. *See County of Sacramento*, 523 U.S. at 846.

Summary judgment with respect to Sergeant Sherbo is therefore affirmed.

c. Officer Rosa

Summary judgment was also appropriate with respect to Officer Rosa, who responded to the Amoco robbery and wrote an incident report. Rosa had arrested Russo in 2001 and had recorded his tattoos in the arrest report that was the reason Russo was in the police database when the 2002

robbery occurred. But the record contains no evidence that Rosa had possession of the videotape, had viewed the surveillance sequence, had transformed it into still photographs, or had prepared the photographic line-up. He had no role or responsibility for Russo's arrest, interrogation, or in the robbery investigation generally. Indeed, Russo did not know him or recognize his name. The district court did not err in dismissing Russo's suit against Officer Rosa.

d. Defendants' Qualified Immunity

Based on our determination that a reasonable factfinder could conclude that DePietro and Borona's conduct violated Russo's Fourth Amendment rights, we move to the second step of the *Saucier* inquiry and assess whether these officers are entitled to qualified immunity as a matter of law. *See Saucier v. Katz*, 533 U.S. 194, 201 (2001).

Qualified immunity protects public officials from liability for civil damages when one of two conditions is satisfied: "(a) the defendant's action did not violate clearly established law, or (b) it was objectively reasonable for the defendant to believe that his action did not violate such law.'" *Poe*, 282 F.3d at 133 (quoting *Tierney v. Davidson*, 133 F.3d 189, 196 (2d Cir. 1998)); *see also Lennon v. Miller*, 66 F.3d 416, 421 (2d Cir. 1995) (summary judgment is appropriate if "the only conclusion a rational jury could reach is that reasonable officers would disagree about the legality of the defendant['s] conduct under the circumstances"). In this case, neither condition has been satisfied.

First, Russo had a clearly-established constitutional right to be free from prolonged detention caused by law enforcement officials' mishandling or suppression of exculpatory evidence in a manner which "shocks the conscience." *See Baker*, 443 U.S. at 144 (referring to such a right as [o]bvious[]" in the context of a warranted arrest and protestations of innocence, and doing so as early as 1979); *Wright*, 21 F.3d at 499 n.1

(quoting *Baker's* statement); *see also Cannon*, 1 F.3d at 1564-65 (holding that a reasonable official would attempt to verify identifying information in the face of the plaintiff's assertions of mistaken identity).

Today we have clarified that Russo's claim should be "treated under the Fourth Amendment," *County of Sacramento*, 523 U.S. at 849 n.9, rather than under substantive due process. But this clarification is of no consequence to the question of whether the right was clearly established, because the proper inquiry is whether the *right* itself—rather than its *source*—is clearly established. *See, e.g., Wilson v. Spain*, 209 F.3d 713, 716 (8th Cir. 2000) ("[T]here is no question that [plaintiff's] right to be free from excessive force was clearly established, even if there is some ongoing uncertainty about which constitutional text is the source of that right." (footnote omitted)); *Alexander v. Perrill*, 916 F.2d 1392, 1398 n.11 (9th Cir. 1990) (noting that the only issue before it with respect to qualified immunity was "whether there was a clearly established duty to investigate"; that its prior decision in *Haygood v. Younger*, 769 F.2d 1350 (9th Cir. 1985) (en Banc), "answer[ed] that question in the affirmative"; and that "[f]or purposes of this appeal, it is unimportant that the *Haygood* court found the prison officials ultimately violated the plaintiff's right to be free from cruel and unusual punishment, rather than the right to due process and to be free from double jeopardy as alleged in this case").

As to the second condition, the proffered evidence would support a jury finding that DePietro and Borona acted intentionally in hiding exculpatory evidence and misleading Russo as to whether the videotape showed a perpetrator with tattoos. Hence, a reasonable trier of fact need not conclude that it was objectively reasonable for DePietro and Borona to believe their actions were lawful. *See Lennon*, 66 F.3d at 420. And, once again, it is of no consequence that we have clarified the source of this right. The question of reasonable

disagreement turns on whether reasonable officers could disagree about *whether* conduct is illegal, not on whether they know the precise constitutional reason *why* it is not lawful.

Qualified immunity to DePietro and Borona is unavailable at summary judgment.

2. City of Bridgeport

Russo also alleged that the City of Bridgeport failed to train and supervise its officers in the handling of exculpatory evidence. Municipal liability under § 1983 for the conduct of employees below the policymaking level requires that a plaintiff show a violation of his constitutional rights that resulted from a municipal custom or policy. *See Dwares v. City of New York*, 985 Rid 94, 100 (2d Cir. 1993); *Monell v. Dep't of Social Services*, 436 U.S. 658, 694 (1978). Having rejected Russo's claim of a violation of his constitutional rights, the court below failed to make any factual findings as to the City's policies with respect to police department handling of exculpatory evidence or with regard to the local implementation of Conn. Gen. Stat. § 54-86c(c), which enumerates a state police officer's duty to disclose exculpatory evidence to the state attorney. Nor did the court examine the application of municipal policies by the police department or the individual defendants.

Nevertheless, the City has admitted, in its supplemental responses to Russo's requests for admissions, that "all individual defendants . . . acted toward the Plaintiff in accordance with custom, policy and practice." We understand this to constitute an admission that, if officers DePietro and Borona are ultimately held to have violated Russo's constitutional rights, then municipal liability against the City will be appropriate as well. Accordingly, given our holdings with respect to Russo's constitutional claims against DePietro and Borona, summary judgment was inappropriate with respect to Russo's claim against the City.

CONCLUSION

If a jury credits Russo's evidence regarding DePietro's and Borona's conduct, and if it finds that the videotape provided adequate verification of Russo's innocence based on his unique physical characteristics, then Russo will have established that he was unreasonably seized by DePietro and Borona, in violation of his Fourth Amendment rights. Russo's long incarceration for the crime of another, in the face of exculpatory evidence that was ignored or actively suppressed, would amount to no less than "a decided lack of solicitude [] for the liberty of [the City's] citizens," *Young v. City of Little Rock*, 249 F.3d 730, 735 (8th Cir. 2001). Moreover, the validity of DePietro's and Borona's assertion of qualified immunity cannot be determined at the summary judgment stage. As such, the district court's grant of summary judgment to DePietro and Borona must be vacated. In addition, given DePietro's and Borona's possible violation of Russo's constitutional rights, and the City's admission that these officers were acting "in accordance with custom, policy and practice," the district court's grant of summary judgment to the City must also be vacated. On the other hand, the district court correctly granted summary judgment to defendants Sherbo and Rosa.

Accordingly, this case is AFFIRMED in part, and VACATED and REMANDED in part for further proceedings. Costs are awarded to the appellant.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

[Filed JULY 12, 2005]

No. 3:03CV1972(AWT)

CHRISTOPHER RUSSO,

Plaintiff,

VS.

CITY OF BRIDGEPORT, *et al.*

Defendants.

ORAL ARGUMENT ON MOTION FOR SUMMARY JUDGMENT

BEFORE: HON. ALVIN W. THOMPSON U.S.D.J.

APPEARANCES:

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* * *

[3] 3:06 P.M.

THE COURT: We're here for argument on the motions for summary judgment in the matter of Christopher Russo vs. the City of Bridgeport, et al. The docket number is 3:03-CV-1792.

Would counsel please state their appearances for the record.

MR. GINZBERG: Your Honor, on behalf of the plaintiff, Christopher Russo, my name is Attorney Jeffrey Ginzberg from Seymour, Connecticut.

MR. WEINSTEIN: On behalf of the plaintiff, Attorney Burton Weinstein, Bridgeport, Connecticut, sir.

MS. BRAZZEL-MASSARO: Good afternoon, Your Honor. My name is Barbara Brazzel-Massaro. I'm with Corporation Counsel for the City of Bridgeport. I represent the individual police officers John Rosa, Jeremy DePietro, Christopher Borona, and Sergeant Joseph Sherbo.

THE COURT: Did you say John Rosen or Russo?

MS. BRAZZEL-MASSARO: Rosa, R-o-s-a.

MR. LASKE: Good afternoon, Your Honor. Arthur Laske, Assistant City Attorney, City Attorney's Office, City of Bridgeport. And I represent the City of Bridgeport.

THE COURT: Thank you.

Let me take a moment to get my papers organized.

[4] (Pause)

THE COURT: I'm looking first at the Motion for Summary Judgment filed by the individual defendants, just so you know—

MS. BRAZZEL-MASSARO: Yes, Your Honor.

THE COURT: —for reasons that may be obvious.

Mr. Weinstein called my chambers with a question about something, I forget exactly what it was, a couple of weeks ago. My law clerk conveyed the question to me and I pulled the file down and I started reading, Before I'd know it, I'd finished reading the motions so I was ready to discuss them with you. I thought that would be faster than taking time to try and write something up, I'll just have you in and talk it through with you.

I do have some questions I want to review first in terms of exactly what are the claims. I want to make sure we're on the same page on that.

The first count sets forwards a claim against the City and the individual defendants. It's a 1983 claim so it's a Monel claim against the City of Bridgeport. As I read it, it's failure to train and supervise against the City; and as to the individual defendants, it appears to be false arrest.

MR. GINZBERG: And also unreasonably lengthy incarceration once arrest had been made.

[5] THE COURT: So it's false arrest and detention?

MR. GINZBERG: Correct. Unreasonably lengthy detention.

MR. WEINSTEIN: And particularly as a result of the failure to disclose exculpatory information which was in the possession of the City for some time before this arrest and that's—

THE COURT: I understand the factual contention about the state statute on disclosure of exculpatory information, but under 1983 you have to bring a claim for violation of a federal right. So that might be a corollary fact, but it wouldn't be a basis for the claim, as I understand it.

MR. WEINSTEIN: Except that for purposes of qualified immunity, since the statute is mandatory, it would not be a matter of discretion, but administrative obligation to turn that information, over.

THE COURT: It's still not the claim itself. It's one of the pieces of evidence that you're talking about in support of the claim or a factual circumstance I think that you're pointing to as in support of a claim as opposed to the claim being based on the statute itself.

MR. WEINSTEIN: I'm sorry, I could not hear that last part.

THE COURT: Well, I said it is not the basis—[6] let me rephrase it.

You're not pointing to that state statute as the federal right that's been violated because it's not a federal statute.

MR. WEINSTEIN: No, I'm aware it's not a federal statute. However, my point—if I misstated, I apologize. The statute I think removes any possible claim of discretion with regard to turning over exculpatory material.

THE COURT: We can talk about that later. I'm not disagreeing with you on that point.

So false arrest and unreasonably long detention.

And then. I think the other three counts are, pretty straightforward the way they're set forth. Actually, they are brought against—I guess they're brought against the individual defendants and the City.

MR. GINZBERG: Yes, Your Honor.

MR. WEINSTEIN: If I may, sir, with regard to the City, paragraphs 32 and 33 of the Second Amended Complaint specifically raise the issues of failure to train and supervise and disregard of the civil rights, which are the elements of the claim, against the City.

THE COURT: Right. I was on Counts Two, Three and Four, false arrest, imprisonment, and then negligent infliction of emotional distress and intentional [7] infliction of emotional stress. Okay.

Let me ask first about this claim of unreasonably long detention. On what date was the plaintiff first presented before—on what date was he arrested?

MR. GINZBERG: 9/18. 9/18/02 *was* the date that he *was* picked up. And he was picked up at his home early in the morning, he was in bed—

THE COURT: I've read all the papers.

Let me preface this because it might save us some time. I looked at what happened with Mr. Russo, think it's a terrible situation. I don't think anybody would disagree with that for somebody to be detained so long and then have it determined that they were not the person depicted on the videotape. That's not why we're here. We're here to talk about the legal issues. And the questions, as I see them, are not whether what happened to him was terrible but whether he in fact has a legal claim against these defendants.

As I look at it, there are several reasons why what happened to him happened to him. I will tell you reading the file I had to really ask myself how could this have not–what could have been done so that this didn't happen? And I think the plaintiff is pointing to certain things that the police officers could have done, but there [8] are certainly other things that other people who were involved in the process could have done. And the question is: Are the police officers liable and is the City liable for what happened?

So I remember that he was in bed and all of that, so just wanted to pin down he was arrested on September 18th.

MR. GINZBERG: Correct.

THE COURT: Was he presented before a judicial officer on September 18?

MR. GINZBERG: September 19th was the date he was presented to a judicial officer.

THE COURT: So he was arrested September 18th, presented September 19th.

MR. GINZBERG: That's right.

THE COURT: Now, at that point the decision to detain him, as I understand things, was made by the judicial officer. So how is there a claim against these officers for detention of the defendant? They had him, as I understand it, for questioning at the Bridgeport headquarters on the 18th.

MR. GINZBERG: Right.

So if we take it from September 18th as the date which—in a continuum, the worst possible thing that the City or the police officers could have done as opposed to [9] August 1st, let's focus on what happened on September 18th and September 19th, as Your Honor suggests. I say that if the judicial authority had known or if it had been brought to the judicial authority's attention the fact that there was a videotape which showed clean arms of the perpetrator, the judicial authority would never have incarcerated or allowed the plaintiff to be incarcerated. It's just clear that that would not have happened.

So based upon what the police officers brought to the attention of the judicial authority at that point, what they portrayed, they portrayed a very surface and I think a callus view of the circumstances. They portrayed a similarity in appearance between the photograph from 2001 and the eyewitness identification in August of 2002. That was way

too superficial for the circumstances given, the vivid tattoos and given the exculpatory videotape which was not turned over. And that videotape was not turned over until he was released in April of '03. So they allowed that videotape to remain completely out of view in a desk drawer somewhere without bringing that information to the attention of the proper authorities. They had a duty to do that. And they failed to do that.

In addition to that—and that would have been outcome determinative.

There's another aspect which is equally [10] determinative but not as stark as colorful tattoos on arms. And that is there was a height and weight differential between the perpetrator and the plaintiff.

The perpetrator was described to have been small, 5'8", very small build. And blonde hair. Not weighing very much. This individual, the plaintiff, was huge, as we all know from the facts.

THE COURT: Well, we can be more specific than that. He was 6', 6'1"—

MR. GINZBERG: He was 6'1", 210 pounds. And not blonde hair. His tattoos, vivid just doesn't describe it. Dennis Rodman would be considered tame compared to the colors on these tattoos.

So just from looking at him, they should have immediately—an alarm should have gone off to go back to that videotape and recheck the videotape to make sure there were some marks or tattoos on the arms.

THE COURT: What you're describing, though, is not an unlawful detention claim. You're saying something that would be the kind of thing people say when they're going to make a claim that somebody obtained an arrest warrant under false pretenses. And I don't see that claim here and I don't see the evidence for it here.

Let me just back up a second. I'm going to mix the two claims together here in terms of the false arrest.

[11] As I read the papers, there are certain things that happened that led up to the issuance of the arrest warrant.

Number one, we had the robbery which was recorded on the surveillance tape.

Number two, Officer Rosa responded to the report of the robbery. He took a statement from Mr. Saleem, the victim. Then it was, I guess, Defendant Sherbo who assigned the investigation to Detective—is it DePietro?

MS. BRAZZEL-MASSARO: DePietro, Your Honor, Jeremy DePietro.

THE COURT: —to Mr. DePietro. And then Mr. DePietro went over to the convenience store/Amaco station, I'm not sure which it is or it's both. He learned that there—he obtained the videotape, surveillance tape. And then he and at some point Mr. Borona were involved in observing that the videotape was difficult to see.

They went to, I don't know if it's St. Vincent's Hospital where they were able to print out photographs of the person. The person had a pink towel around his neck, as I recall.

And with those photographs, at least DePietro, and I don't know what Borona's involvement was, proceeded to look through the book of photographs that the [12] Bridgeport Police Department has and pulled out eight pictures that showed individuals who had similar facial characteristics or I'll say head, face and head characteristics as the person who was depicted on the surveillance videotape.

Is there any disagreement about that yet?

MR. GINZBERG: So far so good.

THE COURT: Okay.

Mr. Saleem who, according to I think Officer Rosa's report, had said that he would be able to identify the person if he saw him again, was shown the photographs and he identified the photograph of the plaintiff, Mr. Russo. And he said something along the lines that he was a hundred percent sure or certain. I mean, it was a positive identification.

MR. GINZBERG: By a 22-year-old. Correct.

THE COURT: Yes, he is 22 years old. I don't know that that's particularly compelling as a fact.

MR. WEINSTEIN: May I suggest one discrepancy left out at that time even before the arrest of—

THE COURT: We're not at the arrest yet.

MR. WEINSTEIN: Given the circumstances, the reaching over the counter, I respectfully submit, sir, it is very unlikely that the victim would fail to have noticed those tattoos. They were very obvious. And to [13] fail to mention them at all—

THE COURT: We're not at the tattoos yet, Mr. Weinstein. We're at what the officers knew. This is—at this point, this is what the officers—this is what the officers have been told.

MR. GINZBERG: Subjectively at this point, because the standard is objective reasonableness, not their subjective point of view.

THE COURT: I think it's undisputed that this i: what the officers knew. I'm talking objectively.

MR. GINZBERG: This is why I would respectfully disagree with that. It's what they believed. Their subjective belief is not really what's relevant.

THE COURT: What do you mean it's what they believed?

MR. GINZBERG: It's what an objective police officer would have done under the circumstances.

THE COURT: At this time we're not talking about what an objective police officer would have done under circumstances. We're talking about what were the circumstances.

MR. GINZBERG: As of August 1 I'm with you so far.

THE COURT: Okay. So at this point the officer has a positive identification and the officer goes out and [14] gets an application—puts together an application for an arrest warrant and a judge signs the application and the warrant issues.

Why didn't the officer—why isn't there probable cause when arrested at that point?

MR. GINZBERG: Because there was an arrest report, Exhibit 2 I believe in my materials which indicated that Christopher Russo had vivid tattoos back in 2001.

THE COURT: What you're saying, in other words, is there were other documents unrelated to this case in the records of the Bridgeport Police Department that showed that he had vivid tattoos.

MR. GINZBERG: Yes.

MR. WEINSTEIN: And further, sir, the Department is a defendant.

THE COURT: Can we have just one person argue this, please?

MR. WEINSTEIN: Very well, sir.

THE COURT: Why don't we get to you later, Mr. Weinstein. If you could relax for a few minutes, okay?

The fact that there may be something else in the police department's records does not mean there is not probable cause unless you can point to the fact or point [15] to some authority for the proposition that in order to have probable cause, a police officer needs to, in addition to having in this case a positive identification by the victim, needs to go

through and search all the information within the control of the department to determine that there's nothing that negates a conclusion that there's probable cause. I didn't see any such authority in the plaintiff's papers.

MR. GINZBERG: Well, I think there is a slight nuance. I'm not saying that he should go into all of the records of the Bridgeport Police Department. All I'm saying is that there was one particular record that they were aware of because they pulled out the photo. And in that record there was a police report from 2001. And one of the officers involved in this arrest was Officer Rosa. And his name is on the 2001 report.

THE COURT: Officer Rosa, though, was not involved in putting together the photograph array, as I understand it. His involvement—first of all, his involvement ceased when he turned in his report, if I'm remembering reading the papers correctly. So he was not involved in putting together the array.

And second, can I ask for a clarification, either from one of the counsel for the defendants or the City, the way I read the papers it sounded as though there [16] was a set of photographs that were gone through. Is this a situation where the City sits down and it goes through the files for all these various arrests, or is there like a mug shot book?

MS. BRAZZEL-MASSARO: It's a computer-generated system, Your Honor. What the officers would do is they would look at, for instance, certain characteristics. In this case an individual who was white male, approximate age, the fact that he had balding hair, the type and shape of his face. They would put those characteristics actually into the computer and the computer would generate a number of photographs that would fit that particular type of description.

And then the computer, basically they would take out those photographs that would fit that description that was generated

if it was here through a report or if it was, for instance, an individual giving a description to an individual drawing in a police department, certain generated type of characteristics. Based on that, then the officers would be just pulling out photographs.

THE COURT: When you say "pulling out photographs," from where?

MS. BRAZZEL-MASSARO: From the computer. That's how it was done. Either Detective Borona or Detective De-Pietro indicate that the photographs were randomly [17] picked. Eight photographs were picked in this case that fit the description that they put in. And then what they did was take from the computer-generated photographs those eight photos and provided them to Mr. Saleem for him to view.

So it was not actually going through case files, it was a computer-generated photograph that came out based on the description. And I think that's what their affidavits indicated in support of our motion, Your Honor. That's what they were talking about, the photo base. They talked about the photo database system, which is what they did.

THE COURT: Do you have any evidence to the contrary, Mr. Ginzberg?

MR. GINZBERG: No.

THE COURT: That's an important point, I think, if what you were suggesting is that when they went to the file to pull the photograph out, they should have at least seen other things in the file. It appears that it's not—there's no evidence to dispute the defendants' position that they literally didn't go to a file and open a file.

So I think we are back at a situation where they had these characteristics, they plugged the information in, and the computer generated photographs and they got a [18] positive identification from the victim.

And at that point I don't know why there wasn't probable cause for the arrest, because they used that information to obtain an arrest warrant from a judge.

MR. GINZBERG: Based upon what they did up to that point of time, there is an argument to be made that 7 there was probable cause. If one takes the viewpoint that—

THE COURT: Well, you say there's an argument to be made that there's probable cause. Can you cite authority for me that there was not probable cause?

MR. GINZBERG: I don't have authority to that point.

THE COURT: Well, why don't you give me your analysis. If you had been writing an opinion that you wanted to cite, what would your analysis be as to why there was not probable cause?

MR. GINZBERG: Because if they withheld information, I think there is authority to the point of view that if you withhold information, that that would remove probable cause. By information, I'm referring, specifically to the videotape.

THE COURT: Well, at the point that they are obtaining the search warrant, I don't understand your argument about them withholding the videotape because it [19] seems to me all the things that are significant about the videotape become significant in hindsight, not in terms of—I mean, when the officers looked at the videotape, first of all, in the initial viewing, it was difficult to see things. That's why they went over to the hospital to get the photographs. And they still weren't terribly clear in terms of his —at least the ones I looked at in the papers, they weren't particularly clear in terms of his arms. And the person's wearing a towel around his neck.

MR. GINZBERG: Well, I dispute any conclusion that it was unclear to the police officers. I posit to the Court that it was very clear if you look at the videotape. The towel only

hid the neck, it did not hide the arms. And if one only looks at a small snippet of the videotape and from that makes a—prints out one photograph, black and white photograph, I agree that you would see only as much as you saw or permitted yourself to see. But if you spent the time and watched the videotape for as long as the perpetrator was in the convenience store, it would become apparent to anyone watching the videotape that he was flashing his arms in front of the surveillance camera. So if you go beyond an initial period of time when the perpetrator is in view to the point in time where the perpetrator walks in and around [20] and back out to the cashier's table and he flashes his arms which don't have any towels, that argument loses credibility that it was somehow unclear and goes into the area where I believe the law is that an officer cannot 5 rely upon his subjective belief; rather, it's what a 5 reasonably objective police officer would think when looking at the videotape.

THE COURT; You're collapsing two things there, though. You're collapsing what are, the facts and circumstances that were known to the officer, and then what is the test you apply in evaluating the officer's conduct. And at this point I'm focusing really on what was known to the officer.

The officer—at the point that the officer looked at the videotape and got the information to get the computer-generated photographs, it seems to me it's reasonable to put—as I understand it, the computer program mug shots or mugs, they're not waist up. So to put in the information that shows the face and then have the eyewitness come in and say they're a hundred percent certain that this is the person, .that's how the officer proceeded. The officer could have done a lot of other things. He could have said, Well, Officer Rosa's report says the person had blonde hair. The videotape appears to show someone who's bald. I think it's blonde crew cut is [21] what Rosa's report says. But the officer's entitled to De-

Pietro's report I think says that the witness told him the person had a shaved head.

So at this point it seems to me that what the facts show are that DePietro sat down, he had a picture the person, he got computer-generated photographs with those facial characteristics. The witness positively identified the person as the person who robbed him. And he obtained an arrest warrant based on that positive identification.

MR. WEINSTEIN: But that's a missing link. In order to get the warrant, they had to have a name, a jacket number, an address. If it was just the face, somebody would have had to have done something to connect a person to that face. A person with a prior jacket, a prior number, who had been arrested by Rosa, and who had then physical characteristics, 6'-1", 210, as opposed to the original description. At that point any moderately competent police officer would have said, "Wait a minute. The description given by the victim is so grossly different from the description of the person whose face got picked out, size, mass, the tattoos." Anybody with any competence would have said, "Maybe we better check this."

So it was not getting the picture and having [22] probable cause because, yeah, he looks like that. It's once they got that, they took that information and did get the database, Exhibit 2, which at that point should have told them that they should have done something else than just tell the judge disregard the height, the weight, and the tattoos.

THE COURT: Well, the other problem we have with your talking about when the officers were before the judge is—I mean, I've never practiced criminal law in state courts, but it was my impression that it isn't the police officers who come in but it's the State's Attorney who comes in and—

MR. WEINSTEIN: Based on what the officer tells him. That's why we have a statute that says you've got to give this information to the officer.

The State's Attorney simply presents the affidavit of the officer. When the officer got the visible ID from the victim, he then went and pulled the jacket. How else would he know the name? How else would he know the address? They got the jacket. That jacket, Exhibit 2, clearly contains the information that demonstrates there were King Tut tattoos and that this man in every other way did not match. At that point the officers knew or ought to have known that they had the wrong man.

[23] THE COURT: Because they find a jacket that shows—

MR. WEINSTEIN: A jacket that shows—

THE COURT: —that he had tattoos?

MR. WEINSTEIN: That's Exhibit 2 to our—opposing summary judgment.

THE COURT: Yes, I see that.

MR. WEINSTEIN: And it's Officer Rosa. And it says "left arm King Tut tattoos."

And so the—at this point in order to get the warrant, you put down a description of who you're going after. And it never occurred to them that they ought to have the description match. That, I think, is where—

THE COURT: At that point why do the officers have to go through—if they have a name and positive identification and they know they just have to find out where to get the person, why are they obligated to do anything other than to just get the information they need to go out and pick up the person?

MR. WEINSTEIN: I think a jury could find that in order to get the name, the name had to come from a record. They had an address. That wasn't generated with a picture. A jury could

find—and it is for the jury to find—whether or not at that point the gross difference in physical characteristics aside from the tattoos should [24] have alerted them and at that point they failed—

THE COURT: We don't get to a jury unless we first pin down the question of whether the officers had probable cause. And I don't have any authority for the proposition that the officers didn't have probable cause.

It's clear that it's a terrible situation that happened to Mr. Russo, but that doesn't mean the officers didn't have probable cause.

I'm also very troubled by the fact that he gets to his arraignment, he says—I think he told his lawyer, if I'm reading the defense papers correctly, that there's a video and I presume or would infer that he told his lawyer that the video, that's great, because if you look at it, you'll see it's not me. Yet there's no request for the video. I mean, there's no hearing before the judge. And at this point, the people who really have the best information about what the video will show are Mr. Russo and his counsel, not the police officers.

MR. WEINSTEIN: No, because counsel filed the regular Practice Book motion for-production of exculpatory evidence, which the prosecutor could not have complied with and didn't because the exculpatory evidence was locked in the drawer of DePietro's desk.

THE COURT: You can't—

MR. WEINSTEIN: Also the fact that the following [25] day or second day after, there was, according to the plaintiff, an interview, an interview carried on by DePietro and Borona in which the plaintiff said, "Look at my arm, look at the other guy. It can't be me."

They go out, come back in a little while and pretend that they looked at the videotape and said, "No, we measured,

they're the same. I'll tell you what. Cop for three years, we'll give you a break." And he refused to become a victim of that attempted extortion knowing he was innocent.

At that point any jury to be able to determine whether to believe Borona, even if you give the police the first two days—

THE COURT: You're arguing facts. I want to know why there—at that point he's been arrested, pursuant to the arrest warrant.

MR. WEINSTEIN: According to what Judge Nevas determined in—

THE COURT: You have not addressed why there wasn't probable cause for the arrest, first of all. And now you're arguing an additional point, which is that when the person whose's been arrested provides an explanation as to why they're not guilty, the police officers violate that person's constitutional rights when they don't go out and investigate the claims made by the person who's been [26] arrested. I'm sure we all wish that that had been done here, but the fact that we think it would have been a good idea doesn't mean it's the law that police officers are required to do it.

MR. WEINSTEIN: But they lied to him and said they did investigate and the perpetrator had the tattoos. That goes beyond the proposition that Your Honor's suggesting. He says, "Look at me, I'm innocent, look at my tattoos." They go out and say, "Okay, we checked. We even measured with a ruler the data." And came back and lied to him and tried to extort a confession out of him knowing they were lying if you believe what was said.

And it's for a jury to determine whether or not the—

THE COURT: You're jumping way—you're being presumptuous when you argue it's for a jury to decide when we're here on a motion for summary judgment and I'm asking you about probable cause. I think you—

MR. WEINSTEIN: They have a continuing obligation to disclose exculpatory material. And if the police officers saw the tattoo, which is—you can't miss. And the man says, "Look, it can't be me, take a look at the tapes." At that point—at that point an affirmative obligation under the statute to do something more than just ignore their own—the City's own records [27] showing the gross physical description. Because if that's not the case—

THE COURT: Where are you finding this affirmative obligation, under the exculpatory evidence statute, Connecticut statute?

MR. WEINSTEIN: Yes, that's their duty.

And also it was made quite explicit by Judge Nevas in his decision on a motion for summary judgment in the Murvin case.

THE COURT: I read the Murvin case, it doesn't help you at all here. Sorry. That's my—

MR. WEINSTEIN: In possession of information after the fact that contradicted—

THE COURT: Murvin is not this case.

First of all, I mean, you're saying this tape which was viewed by the officers clearly showed that Mr. Russo had these tattoos, but the only evidence I see in this record is that even the prosecutor in the state court action when the parties were in state court did not agree that the tape exonerated Mr. Russo nor did the state's investigator, Mr. Donovan. Mr. Donovan's affidavit states that—I think it was Mr. Mirsky who was the attorney for Mr. Russo told Mr. Donovan that this tape clearly shows it's not Mr. Russo. And Mr. Donovan says, "I cannot agree that the tape shows it's not Mr. Russo."

[28] Then when they were in court, I don't remember the name of the state prosecutor, but I believe Mr. Russo at his deposition testified that this issue came up in court before the

judge, I assume, and the remark from the prosecutor was, "A jury will have to decide that."

So what we have, in contrast to that, are your arguments about what the officers should have tumbled to. But what we have in evidence is the people that were actually involved at the time did not see the tape as exonerating Mr. Russo. The prosecutor was still proceeding with the prosecution.

MR. WEINSTEIN: Ham and Gooden both address some of the situations where "I was at work, check my work records" —

THE COURT: I'd like to talk about what I'm talking about, the facts of this case.

MR. WEINSTEIN: Yes.

THE COURT: The facts of this case are I believe as I stated them. We have your arguments that you want to put before a jury. But what I have to look at is: What is the evidence that's in the record now?

MR. GINZBERG: Up to September 18th. Your Honor, up to September 18th when the arrest was made, the point that you're making is probable cause. But at the point after the arrest was made and Mr. Russo was in [29] custody, there became a different burden upon the police, because at that point Mr. Russo—

THE COURT: If I can compartmentalize this. Are you conceding there was probable cause?

MR. GINZBERG: I am conceding, for purposes of this discussion, that there was probable cause.

THE COURT: Okay. But you're not giving me any—what I hear you saying is you're not conceding for purposes of the motion—

MR. GINZBERG: Right.

THE COURT: —but just this part of the discussion?

MR. GINZBERG: Right.

THE COURT: But you haven't given me anything that would show that there was not probable cause.

MR. GINZBERG: Right.

THE COURT: That's my conclusion, just so we're clear. Okay.

Now you want to talk about after September 18th.

MR. GINZBERG: I concede that point for purposes of our discussion. Obviously an arrest was made.

But I think the focus of this case, the most important part of this case really is what happened after Mr. Russo was taken into custody. It was after the custodial arrest that Mr. Russo then had this [30] interrogation that occurred on September 18th. And during this custodial interrogation, he had an opportunity, once again, to make his point to the police officer. The police officer said to him, "We have the tape." And Mr. Russo said, "Well, then you must know that it couldn't be me. Because what did the perpetrator have on his arms: Did he look like me? Did he have tattoos on his arms?"

And that's really the more important part of the case because it's really from September 18th on until April where Mr. Russo was in custody. And at that point the individual defendants, the City was on notice that there was a claim of unreasonably lengthy detention by virtue of the tattoos.

THE COURT: At the point that Mr. Russo is in custody, who's the decision maker in terms of what happens to him?

MR. GINZBERG: The court.

THE COURT: I thought he was in custody and he had to be arraigned. He was in custody but there had to be an arraignment to determine whether he should be detained or not.

MR. GINZBERG: Right.

THE COURT: I hope I'm getting the terminology right.

MR. WEINSTEIN: Not an arraignment. This was [31] based on information, based on affidavit and warrant.

THE COURT: He was presented and arraigned the next day, what do you call that? The court proceeding on the 19th?

MR. WEINSTEIN: It was—

THE COURT: What was the court proceeding on the 19th of September?

MR. WEINSTEIN: They proceeded by way of the information and he was arrested. And he was held in custody. From that point on, there was a continuing obligation as a matter of law—

THE COURT: I'm sorry, you're not answering my question. All I wanted to get to was from the arrest, they brought him into headquarters and questioned him for a couple of hours. But as I understand it, there's some obligation that he be presented before a judicial officer before he can be detained further. And I was making reference to the court proceeding on what I have been told was September 19th. What's that proceeding called in state court?

MS. BRAZZEL-MASSARO: Your Honor, I have it. It was an arraignment.

THE COURT: An arraignment. So he was arraigned.

And at that point, it appears to me, at least, [32] that the judge is making the decision based on the arguments received from the prosecutor and defense counsel. And I agree with you defense counsel—I'm sorry, the prosecutor is basing his or her decision on how to proceed on information that is obtained from the police officers. But it's the two lawyers arguing to the judge. And the judge made the decision to detain.

MR. GINZBERG: But how can the judge—again, I'm not disagreeing with your point about the probable cause, I'm moving on to a different point, as you say, compartmentalize the separate point.

Once the judge hears arguments and there has been a disconnect between what the police officers are giving to the prosecutor—I'm talking about September 19th as there was in this case—the judge doesn't have any discretion at that point to disagree with the State's Attorney's Office.

There was a continuing obligation beginning on the 18th and continuing to the 19th to go back and look at that videotape and determine, based upon the police officer's investigation, whether it was right. Don't forget—

THE COURT: Well, Mr. Russo is sitting there in court in front of the judge and the prosecutor with the defense attorney. Mr. Russo, as I understand it, told his [33] lawyer at the first appearance, "You can show it's not me because I have these tattoos. And it's unlikely anyone else will show up on the videotape with these type of tattoos." It seems to me if that were the situation in this courtroom, I would expect to be hearing from the defense counsel, "Look. Look at the videotape. My client has these tattoos. It's unlikely anybody else has tattoos like this." And the prosecutor would be hearing that too. And they would look at Mr. Russo and they would say, "Well, it seems to me that's something that ought to be explored." But at that point it's not the officers who are running the show, it's the prosecutor and the judge who are having this discussion.

MR. GINZBERG: But at that point the police are telling the prosecutor that the perpetrator has tattoos just like Mr. Russo because they conducted this interrogation where they were measuring the tattoos to make sure they were similar.

THE COURT: Where does the record show that the police officers told the prosecutor that the person on the videotape has tattoos like Mr. Russo?

MR. GINZBERG: That does not—

MR. WEINSTEIN: If Your Honor please—

MS. BRAZZEL-MASSARO: Your Honor, there is no such fact that has ever been stated. The only person who [34] has said that was Mr. Russo. In fact, the testimony of the officer is very—at least in the deposition was vet: different from that.

THE COURT: I'm not talking about the conversation in the interrogation room. Mr. Ginzberg made a reference to the officers are telling the prosecutor.

MS. BRAZZEL-MASSARO: Your Honor, if you look at the affidavits that were submitted by both officers, they indicate after the arrest of Mr. Russo they never saw him again or had anything to do with the case, in fact, until they met him here one day at a status conference. So that they had nothing to do with it once it went to the State' Attorney's Office with the file.

The file indicates that there's a warrant and the warrant shows that there's a videotape that was provided, but there was no conversation between the State's Attorney and the police officers that has ever been indicated in any testimony, evidence, anything of that nature.

MR. WEINSTEIN: If Your Honor please, Exhibits and 6 describe what the police knew at the relevant time. Exhibit 5—

THE COURT: I think I asked Mr. Ginzberg—I asked Mr. Ginzberg about a specific statement. You're going to something else. Can we finish with that first?

[35] MR. GINZBERG: Yes.

THE COURT: My question was—

MR. WEINSTEIN: But the tattoos—

THE COURT: —I believe you made a reference to the—I think you made a reference to the state prosecutor being told by the officers that the person on the videotape had tattoos.

MR. GINZBERG: I'm assuming that, Your Honor. Because there seems to be, in my opinion, a fact question here as to why the prosecutor wouldn't tell the judge that there was an issue with regard to the tattoos. It seems to me that a reasonable prosecutor, knowing that there was a videotape and a claim of tattoos, would have instructed the judge that there was exculpatory evidence here and we need to take a closer look.

THE COURT: But you can't assume that for purposes of this motion.

MR. GINZBERG: I think it's a fact question that needs to be resolved in favor of the plaintiff.

THE COURT: It's pure speculation under the summary judgment standard.

MR. GINZBERG: It's not. It's a factual issue, Your Honor. I beg to differ with the Court.

MR. WEINSTEIN: Your Honor, if you look at Exhibit—

[36] MS. BRAZZEL-MASSARO: That issue has never—

THE COURT: Excuse me, we're stopping.

Mr. Weinstein, please sit down. I'd like to hear Ms. Massaro respond to that point.

MS. BRAZZEL-MASSARO: Your Honor, that issue has never been raised. During the entire deposition of Officer DePietro, that question was never asked of him. In fact, I believe he was asked questions about his contact with anyone after this, and he indicated there was no contact, Your Honor. So he had, in his deposition testimony, indicated that there was none. So I don't know where we're suddenly coming up with this as a fact question. It was never alleged in the

complaint, it was never addressed in the deposition. Today for the first time we hear this statement that the officers went to the prosecutor telling them that the individual in the videotape had tattoos. That has-never been raised.

THE COURT: I think it's been described as an assumption.

Mr. Weinstein, you had a point?

MR. WEINSTEIN: Yes.

If Your Honor please, Exhibit Number 5 attached to the 56(a)(2) statement is dated September 18, 2002, and it is the report on Mr. Russo from the police department. 6:20 that morning, the date of the arrest, he was charged [37] with robbery first degree on a warrant. At that point—at that point—the notation is made "tattoos right neck, left neck, right forearm, right hand, left hand." And the description of him is 6 ft., 200 pounds.

Compare that—compare that—with the description of the perpetrator as being a white male 5'6" to 5'8", medium build with no mention whatever of any tattoos.

I respectfully submit, sir, at that point any competent police officer at all would have known that there is a sufficient discrepancy between the two to require some sort of investigation, especially the following day in view of the protestations "Look at me, look at my tattoos." And that's why there was no probable cause to continue. And there was an affirmative burden to tell the magistrate that there was exculpatory information here and to investigate.

MS. BRAZZEL-MASSARO: Your Honor, if I may, that Exhibit 5 was the arrest report that was done, as you see, by the arresting officer, Detective Martin. That was not something that was done by any of the officers here. , There's no information to indicate that any of the defendants in this case were involved. That's the paperwork that was done the day he was arrested by Detective Martin. I don't know what rele-

vance it has to [38] this particular claim against these defendants.

THE COURT: Did you have other points you wanted to make, Mr. Ginzberg?

MR. GINZBERG: Not at this time, Your Honor.

MR. WEINSTEIN: If I may make one, sir?

THE COURT: Yes.

MR. WEINSTEIN: The reason that Inspector Donovan and the State's Attorney's Office had the enhanced photograph made that exonerated Mr. Russo was that everybody agreed the quality, the quality of the original videotape and even the effort to enhance it at the hospital was too vague, it wasn't up to standards, nobody could be quite sure.

Under those circumstances, I respectfully submit the situation is no different than failure to check the time slip alibi as in hand or the gross misdescription. There has got to be some obligation, and there is in the Connecticut statute as well as under the law that protects us from illegal imprisonment where there is clear indication of a missing identification. There's some obligation to try to follow through.

Here actual knowledge on the part of the department, the department records that had to be consulted clearly indicated that the perpetrator did not bear a resemblance to Mr. Russo. And that's why, when the [39] police proceeded until finally even those who were blind could see he was not the right man, it cost Mr. Russo two hundred—

THE COURT: 213?

MR. WEINSTEIN: 217.

THE COURT: 217 days?

MR. WEINSTEIN: 217 days of his life.

THE COURT: Did you want to address that, Mr. Brazzel-Massaro?

MS. BRAZZEL-MASSARO: Your Honor, I only wanted to make a couple of comments to correct some statements that were made on the record.

I think Attorney Ginzberg indicated that the videotape was in the drawer of Detective DePietro's desk until April 2003. Obviously, we know that that's not so since Inspector Donovan did obtain that from him.

THE COURT: I believe it was November 25.

MS. BRAZZEL-MASSARO: That's correct, Your Honor. November 19th was the date that he asked for it and actually Detective DePietro was not in, he was a trainee at that time. On the 25th he returned and received the tape, from Detective DePietro at that time.

In addition, Your Honor, I did indicate that there was one affidavit that addressed the computer generated, that was Detective Borona who was able to [40] obtain it through the computer. If you will review his affidavit, I believe—

THE COURT: Is that attached to your original?

MS. BRAZZEL-MASSARO: That was attached to my original motion, Your Honor, I believe. And his affidavit is actually Exhibit M.

THE COURT: Yes.

MS. BRAZZEL-MASSARO: And he indicates on the second page of his affidavit how it was that they accomplished getting the computer-generated information.

THE COURT: Give me a second to read that, please.

(Pause)

THE COURT: Okay, thank you.

MS. BRAZZEL-MASSARO: And then lastly, Your Honor, the only thing that I do want to refer to is one of the last statements that was made by Attorney Weinstein regarding Inspector Donovan and what he had to do.

Everybody agreed that the tape was of poor quality and needed to be enhanced. And that is exactly what we're talking about here. And the April 23, 2003 transcript with Attorney Benedict, I believe, was the state's attorney at that time who handled the matter, and I just want to quote what he indicated after they had the [41] tape. He said, "We thereafter, having heard about the tattoos on the arms, had still photographs developed from the videotape. And from still photographs I believe myself amongst other persons who had seen Mr. Russo in the courtroom all were reasonably convinced, if not completely convinced, that Mr. Russo was in fact the person who appears in the still photos of the videotape taken at the convenience store."

Your Honor, I think that tells it all.

THE COURT: Yes, Mr. Ginzberg?

MR. GINZBERG: Thank you, Your Honor.

If I might, on that last point, I want to bring to Your Honor's attention that that argument by the State's Attorney Benedict was made in hindsight. The only statement he gave was in April of '03, and that was the date which he said, "The less said about the case the better." So he was reflecting on photos that were presented some time ago. And the statement really was what I would consider more or less a redoing of past history on his part.

THE COURT: Although Inspector Donovan's, as I understand it, was not. His conversation took place with Attorney Mirsky towards the end of, I don't know, November, January—

MS. BRAZZEL-MASSARO: I think the letter was [42] actually December 2 of 2003. There was a question as to the videotape. Inspector Donovan indicated that he had questions about the clarity of the videotape and sent it for an enhancement to the state lab. It wasn't until January of 2003, I think it was January 23, 2003 that the videotape was returned enhanced from the state lab.

And then it was some conversation thereafter, I think it was in March was the last conversation that Inspector Donovan had, Your Honor, based on his affidavit.

Your Honor, are you looking for the affidavit of Inspector Donovan?

THE COURT: No, I was just looking for the photographs again.

MS. BRAZZEL-MASSARO: Your Honor, I noticed it was April actually when he actually sent the last letter. to the correction center. I wanted to make sure I didn't misstate. April 21.

THE COURT: Okay. Is there anywhere in the papers—I see Exhibit 7 to the plaintiff's opposition a series of photographs which are, I assume, the photographs that are from the surveillance camera stills?

MR. GINZBERG: Yes.

THE COURT: Are those the ones that then were used to—let me be more precise.

We have the videotape itself, Are these from [43] the videotape or are these the photographs that were prepared by the officers when they went to the hospital tc get the prints made?

MS. BRAZZEL-MASSARO: No, those are not the photographs that were prepared by the officers. I think I provided the originals.

THE COURT: I don't mean the photo array.

MS. BRAZZEL-MASSARO: The, photographs, yes, I did provide those to the Court also. I think I have with me copies of what the State's Attorney had as the photos, which is really four quadrant-type photographs, Your Honor. It's not done in this fashion.

If I understood the memorandum of the plaintiff, these photographs are actually the photographs that they had done through their videographer. So they were not the actual photographs that were available to the officers nor to the State's Attorney.

I believe if you look at my Exhibit O, that it has a series of photographs. I think I provided the Court with the originals of those.

THE COURT: Yes. I actually am working with the chambers' copy.

MS. BRAZZEL-MASSARO: And I do have another series from the State's Attorney's Office which are very similar to these, Your Honor, also.

[44] THE COURT: I'll make one observation which I don't think is a material fact for purposes of the probable cause issue, but it's something I don't think I've mentioned in terms of some of the other arguments that have been made.

We do have the fact that the person who robbed the establishment had this towel around his neck. And my recollection is that, as you got further into the case, some of the people on the prosecution and law enforcement side viewed that as a circumstance that could suggest they, shouldn't put as much weight on Mr. Russo's version of events as they might otherwise, because the towel would obscure any noticeable tattoos that he had around his neck. I was reminded of that when I saw this.

I don't think that's a material fact for purposes of the probable cause analysis, however, because I still come back to the fact that you had the video surveillance tape used to produce a photograph. Those photographs were put into the computer which generated a lineup. A witness came in and made a positive identification, hundred percent positive identification, after having said the witness would be able to identify the person if he saw him again. Based on that, an arrest warrant was obtained and the arrest was made pursuant to a warrant, not by any of these defendants, by the way.

[45] So as to false arrest, I really don't see any genuine issue of material fact. And it seems to me there was probable cause for the arrest and therefore there is no—well, therefore there's no constitutional violation and the defendants are entitled to judgment as a matter of law on the probable cause on the false arrest claim.

MR. WEINSTEIN: But as to false imprisonment from the time they knew or ought to have known that they had the wrong person because of the police records, because the arms of—the perpetrator didn't have his arms covered. And because of the facts in which they were obliged by Connecticut law to disclose if they had bothered to look, the false imprisonment I think was here.

I would respectfully call Your Honor's attention to the fact that as far as DePietro, who was the top man on the case, is concerned, he had no idea what exculpatory evidence was or meant.

If Your Honor would be good enough to look at our 56(a)(2) statement, September 10th. We have a transcript. It's Exhibit 3 of the deposition of DePietro. And I asked the question: "And during the course of your career as a police officer from the time you first were hired until today, has anyone ever told you that if you encounter exculpatory information on a case you have been investigating, that you

have an obligation to inform the [46] State's Attorney in charge of the prosecution of that ca of the existence of the exculpatory, information?" Answer: "Specifically, no."

Then I asked: "Did anybody during the entire course of your training as a police Officer ever indicate to you that there was a state statute which says you have an obligation to inform the State's Attorney in charge of the file—who are in charge of the prosecution of the case you investigated of any exculpatory information as soon as you learn it?" Answer: "Specifically has anybody specifically told me that? I'm not sure. I couldn't answer."

The chief investigator on this case had no idea, first of all, even what exculpatory information was and then that if he encountered it he should turn it over.

I respectfully submit, sir, that the law in this district, as expressed by both Judge Goettel in the Calovine case and by Judge Nevas in the Murvin case, is that if exculpatory material is learned after the initial arrest, there is an affirmative duty constitutionally under the fourth, quote, procedural substantive due process and under Connecticut law to call that to the prosecution or the magistrate. Because otherwise innocen people can be locked up indefinitely until time of trial and nobody cares under the law. That is not the law.

[47] THE COURT: Now you're amending your complaint, though.

MR. WEINSTEIN: I'm sorry, sir?

THE COURT: Now you're amending your complaint.

MR. WEINSTEIN: No, sir.

THE COURT: You don't have a procedural or—you made reference to procedural and substantive due process.

MR. WEINSTEIN: We have paragraph 34 of the Second Amended Complaint, as a result of the violation of plaintiff's

civil rights, his false imprisonment, false incarceration, he suffered the following damages. That's paragraph 34.

THE COURT: So you're not making a procedural due process claim.

MR. WEINSTEIN: I'm making both. But we have made the false imprisonment claim. And that false imprisonment occurred when they knew or ought to have known that there was information which contradicted the information they gave to the judge and never disclosed that. It's not fair to the magistrate.

THE COURT: In your analysis, when did the false imprisonment commence and when did it end?

MR. WEINSTEIN: Oh. It ended when the charge was dismissed, That's the easy one, False imprisonment [48] ended on April 23, 2003.

It commenced, I respectfully submit, at least the day of that interview, the following day I guess the 20th, maybe the 19th, the day of the interview when they saw the tattoos.

By that time, it's very difficult to believe the chief investigating officer was totally oblivious to the record of the man that he had arrested. He knew about the tattoos before. There was no indication of any tattoos on the arms in any of the photographs. And he then says, "Look, cop a plea."

THE COURT: Let's have Ms. Massaro address that false arrest. Is that addressed in your papers, Ms. Massaro?

MS. BRAZZEL-MASSARO: Your Honor, we were not aware that there was a false imprisonment claim. We thought it was unreasonable detention claim, which is what I think Attorney Ginzberg indicated in the beginning of his argument. I suppose at this particular time we're no aware that that was a claim that was made.

However, I think that even if you look at the facts in this case, that that claim, cannot survive either

But let me just go back to the initial statement about what Detective DePietro testified to in the deposition. I think that Attorney Weinstein, [49] unfortunately, has chosen certain questions and answers and not provided the Court with a full response of Detective DePietro during the course of that deposition when he was asked on at least three separate occasions regarding exculpatory evidence and was even asked to define what he thought was exculpatory evidence on page 13 of the deposition. I think that's one of the exhibits that the City has provided to the Court. And then thereafter was asked a little bit more about exculpatory evidence, and I think that was part of the City's exhibit. It was pages 72, I believe, 75 through 77 again when he was asked at his deposition about his training and exculpatory evidence where he indicated he got specific information about exculpatory evidence and what he was to do with it.

Let's go back to the claim whether or not there was false imprisonment. There's been no claim in this case that these officers falsely imprisoned Mr. Russo And in fact, if you find that there was probable cause to arrest him on September 18th, 2002, and he was then arraigned on September 19, 2002, and the Court was to make a determination as to whether or not there was sufficient information to hold him and what the bail would be, then there is no false arrest of Mr. Russo.

THE COURT: You mean no false imprisonment.

[50] MS. BRAZZEL-MASSARO; No false imprisonment, I'm sorry, of Mr. Russo.

In fact, that's what the court did. And bail was set at $100,000 I believe on September 19th based on this arrest and also some other arrests that he was involved in because he was on probation, as I understand it, at that time. So that

there's no false imprisonment that would be connected specifically to these particular defendants at that time, Your Honor.

THE COURT: I agree.

MR. GINZBERG: If I may, Your Honor, I'm just pointing to the Court the second count which alleges false imprisonment.

THE COURT: I'm really focusing on the federal claim at this point.

MR. GINZBERG: Well, the federal claim is incorporated by reference into the second count because paragraph 3—

THE COURT: I don't disagree with you, but I'm really focusing on the federal claim. Because if I don't have jurisdiction over the federal claim, I'm not going to keep the state law claims.

MR. WEINSTEIN: Your Honor, I suggest that it is a federal failure, a federal constitutional violation to know or ought to know that a perpetrator is 5'6" and slim [51] build and to be aware of a description of a 6'1", 210-pound man and not tell the court that discrepancy is irrelevant when you make the decision to issue the warrant. And if you don't discover it until the next day or the day after, there is a continuing obligation to inform the court and the prosecutor that you've got the wrong man.

And to establish the precedent that the police can simply disregard information which they either know or ought to know after an arrest and wait months until the case comes to trial before innocent people are turned loose is not in accord with the Constitution, which is exactly what I think the defendants are claiming they have a right to do.

THE COURT: I don't understand that they're claiming to have the right to do that. I understand they're claiming that if they have them—well, I won't go through the facts again. They had probable cause. And they proceeded.

MR. WEINSTEIN: To arrest, but not to continue to detain. That's the point. Probable cause to get the warrant is one thing. Probable cause to act or fail to act in such a way to maintain the imprisonment of a man that probable cause alone applies to, that's what we're basing on.

[52] THE COURT: Well, I guess I've given you my conclusion that there are no genuine issues of material fact as to the claimed false arrest and the defendants are entitled to judgment as a matter of law.

I also said I agreed with Ms. Massaro's analysis in terms of false imprisonment because the plaintiff was arrested pursuant to an arrest warrant—

MR. GINZBERG: Just one point, Your Honor? I'm sorry.

THE COURT: Let me finish this and then I'll hear you.

—and he was presented before a judicial officer who concluded that he should be detained.

So I don't see any genuine issues as to false imprisonment either. I think the defendants are entitled to judgment as a matter of law on that part of Count One as well.

MR. GINZBERG: On that point on Count One, Your Honor, the false imprisonment, there is authority for the proposition that the Fourth Amendment does apply to the point in time between the arrest but before the trial And the cases that I have in mind are Sanders vs. English 950 F.2d 1152, a Fifth Circuit case, and Jones vs. City Chicago, which is a Seventh Circuit case. And to conclude that just because there was probable cause and then sweep [53] into the next issue that that rules out a Fourth Amendment claim for unreasonably lengthy detention I feel gives short shrift to that second claim of the unreasonable length.

THE COURT: But I believe what you're arguing is, first of all, that the—two things: First of all, that the videotape showed and that the defendants knew that the person on the

videotape did not have tattoos on his arm. And we don't have any evidence that would create a genuine issue of material fact as to that point. All the evidence in the record is to the contrary.

And secondly, you're arguing that—you're arguing that assuming that you win on the first point, which I think you don't, the officers have an affirmative duty to go out and investigate claims that are put forth by the person who's been arrested—in this case, the plaintiff, Mr. Russo—while the court proceedings are going on. And I believe that—can't remember the name of the case, but there's a case cited in the defendants' papers that I believe stands for the proposition that once the arrest is made and certainly once you get to the point of the arraignment and there's a detention by a judicial officer, the police officer's job is done. They don't have obligations.

Do you remember which case that was, [54] Ms. Massaro?

MS. BRAZZEL-MASSARO: Your Honor, I don't, but have a case Shattuck vs. Town of Stratford, 233 F.Supp.2d. 301, which was a decision by Judge Droney on November 13, 2002. But I don't think that that was the case I cited in my brief.

THE COURT: I printed those cases out. I just have so many papers here on the bench I can't put my hand on it.

It is cited in the defendants' papers.

MS. BRAZZEL-MASSARO: Yes; Your Honor, Williams vs. the City of New York.

THE COURT: Yes. The Williams case. That's what I'm thinking of.

MR. GINZBERG: I guess the Court is—

THE COURT: I'm going to—your question?

MR. GINZBERG: My question is: Does that mean that the Court is not going to consider the Sanders case that I cited where the police officer found exculpatory evidence after the arrest and the Jones vs. City of Chicago case in which a police officer kept street files, quote/unquote, they were called street files?

THE COURT: No, it doesn't mean I'm not going to consider those cases. It means, as I stated a moment ago, that I don't think you've created a genuine issue of [55] material fact as to whether the officers knew they had exculpatory evidence until the tape was enhanced. And at that point, in fact, the officers weren't involved in the case; it was in the hands of the state investigator, Mr. Donovan, and the prosecutors. I just don't think you've created a factual issue as to whether the officers were aware of exculpatory evidence.

It's undisputed that the tape was unclear. So I'm not ignoring those cases, I just don't think you've put forth evidence that creates an issue for trial as to whether they knew they had exculpatory evidence.

MR. GINZBERG: I'm a little stunned because I thought that the videotape is clear in what it shows and Your Honor is saying that it's not clear, that Your Honor is assuming—not assuming, I said the wrong word. Your Honor is taking the point of view of what the police officer believed on September 18th.

THE COURT: I guess what I'm looking at is what I have in front of me as evidence in the record. And what I have as evidence in front of me in the record is the statements by everyone who looked at the tape prior to it being enhanced to the effect that the tape was unclear and it needed to be enhanced, which was done in January or—

MS. BRAZZEL-MASSARO: January.

THE COURT: Around the January time frame. And [56] it needed to be enhanced because it was unclear.

And at that point I believe the tape being enhanced and showing that there are no tattoos on the arms of the person who committed the crime, it's clear that that's exculpatory evidence. But before then, it's not exculpatory evidence. And there's no evidence that any defendant in this case had a basis for knowing that.

MR. WEINSTEIN: Except for the gross difference in physical appearance, the 6'1", 200—

THE COURT: We're talking about the tape now.

MR. WEINSTEIN: I beg your pardon?

THE COURT: I'm dealing with the tape now and want to make sure I've finished with that. You want to come back and talk about the physical appearance, we can talk about that next.

So my answer is, I'm not ignoring those cases. I'm just saying the point in time at which there is a discovery that there's exculpatory evidence is in January. And at that point none of these defendants are involved in the case.

MR. GINZBERG: And I guess—

THE COURT: In the criminal case, that is.

MR. GINZBERG: So Your Honor is saying that what the police officers' subjective opinion was about what the: tape showed really governs.

[57] THE COURT: No. Because it wasn't just the officers.

The question is: What does the evidence in the case show was discernible from the videotape? And the evidence in the case is the statements of the officers. I have the tape, a cutout from the tape here myself. I also have the statements of Mr. Donovan, the state inspector, and I have in the record before

me the statements of the prosecutor. And that's the only evidence that I have as to what you could discern from the tapes. With that evidence, the only conclusion that you can draw is that you cannot tell that the person who robbed the store did not have tattoos based on that surveillance videotape.

MR. GINZBERG: I think that Your Honor said that we were going to deal with the videotape and what the officers believed on September 18th about that videotape. And now Your Honor's going into the Donovan portion of the case which came about in January of '03.

THE COURT: I only went there in response to your question.

MR. GINZBERG: I attempted to discuss what Your Honor raised, which was let's deal with the videotape. And the statement that I made to Your Honor for comment was, "You're taking the police officers' subjective opinion about what the tape revealed as of [58] September 18th, '02." And Your Honor said, "No, I'm considering the Donovan portion of it."

The Donovan portion of it didn't come about until January of '03. I think the Donovan portion of it is irrelevant to our discussion now about the videotape. I'm talking specifically about the videotape. And what I'm hearing from Your Honor is that you're taking the position that the police officers' perception of those videotapes is what governs.

THE COURT: No. The question I thought we were discussing, the argument that was made which was that there was a duty to disclose information that exonerated Mr. Russo. That's where this part of the discussion started. And my analysis was that there was no indication that there was evidence that exonerated Mr. Russo until the enhanced tape was prepared in January of 2003. That's what we were discussing.

MR. GINZBERG: Okay. Within that compartment, the only way that Your Honor could come to that point of view would be by looking at the videotape. And on September 18, '02, if one were to look at the videotape, one would have seen exonerating evidence. And that was not turned over.

THE COURT: What's your factual basis for saying that—point to me, point out to me something in the [59] record that supports that conclusion. That's where I'm hung up on accepting your argument. What's in the record that supports that conclusion?

MR. GINZBERG: That the videotapes shows—

THE COURT: Was exonerating evidence.

MR. GINZBERG: The videotape itself was the exonerating evidence.

MS. BRAZZEL-MASSARO: Your Honor, I disagree. Obviously, the videotape was not discernible to be able to—

MR. GINZBERG: And my point was that that is a subjective opinion, not a reasonably objective one. I'm saying that when looking at the videotape, it is not reasonably objective. It's only subjective for a police officer.

THE COURT: You're mixing the standard for determining qualified immunity with the standard for determining whether there's a genuine issue of material fact. That's not the standard for determining whether there's a genuine issue of material fact.

MR. WEINSTEIN: If Your Honor please, there is not only the tape. On the record and for Your Honor, there was clearly exculpatory information which the police knew or ought to have known about the gross physical difference between the alleged perpetrator, 5'6", medium [60] build, blonde crew cut, and what they knew as of the day of the arrest. The tattoos are described. Leaving that out, we've got somebody

who is described as being 6'1" or 6 ft. and 200 pounds. That gross physical description—

THE COURT: Can I ask you a question, though? You're saying you've got somebody who's described. As understand the record, you have—and I think you have to help me find. We have Mr. Russo's report, okay, his incident report or whatever it's called.

MS. BRAZZEL-MASSARO: Rosa.

THE COURT: I'm sorry, Rosa. Which says "white male, 5'6" to 5'8", medium build, very short hair, crew, blonde hair." And then "pink towel on neck, late 30s." Okay, That's Rosa's report.

Then you have the surveillance photo.

And I have the report done by Mr. DePietro when he interviews the witness, Mr. Saline, where he says "Saline went on to describe the suspect as a white male in his late 20s or early 30s, blue shirt, blue jeans, pink towel. The suspect had a shaved head and did not speak with any accent." That was what DePietro got from his interview.

MR. WEINSTEIN: And the records—

THE COURT: And he had the picture—

MR. WEINSTEIN: Yes.

[61] THE COURT: —which doesn't depict someone who's—

MR. WEINSTEIN: And Mr. Russo contradicted that.

THE COURT: Mr. Rosa or Russo?

MR. WEINSTEIN: Mr. Russo's prior record from Exhibit 2. And the description of Mr. Russo—the objective description of Mr. Russo the following day, September 18th, shows him to be 6 ft., 200 pounds. And unless Your Honor is saying that something is a gross misdescription, has no and should have no effect legally constitutional on the duty of the

police to inform the magistrate that there is a fundamental discrepancy—

THE COURT: If this were a case where the only description that they got was what you're talking about, I would agree with you. But it's a situation where they have a positive identification of a photograph that was created as part of an array by the computer based on an actual video surveillance photograph.

Ms. Massaro, did you want to say anything on that point?

MS. BRAZZEL-MASSARO: Your Honor, I just want to note that what he's referring to is Detective Martin's arrest report which he did the day that he arrested him in Seymour, which was not part of the warrant. The warrant application didn't have any description of that nature in [62] the warrant as to height and weight of the individual. Indicated only that there was a photograph in which he identified him.

THE COURT: That's correct.

MR. WEINSTEIN: That supports our point. They should have done it. If this was a standard photograph where they take the picture showing the height and there's some weight, there would be the obvious contradiction. Here the police records, the department had the information. That information was available to the inspector in charge of the case who simply disregarded it.

And if I understood Your Honor, Your Honor is saying that once there was probable cause, the officer has no obligation whatever to do anything no matter what kind of exculpatory information—

THE COURT: You did not understand me. Because that is not what I said.

MR. WEINSTEIN: Well, here we do have exculpatory information, at least as to size and weight, which the officer knew or ought to have known but was never disclosed.

THE COURT; And I think we've addressed that point fully and I don't agree with you that you have exculpatory information that the officers were aware of.

So I'm entering judgment as a matter of law on [63] Count One for the defendants. Enters for the individual defendants because there is no constitutional violation. And there cannot be a Monel claim against the City of Bridgeport in the absence of a constitutional violation.

I don't need to go any further than that in my analysis with respect to the city of Bridgeport. There are additional reasons why that claim would fail in any event.

I decline to exercise jurisdiction over the state law claims.

I will say, as I said at the beginning, this was a terrible situation for Mr. Russo. And my ruling doesn't minimize that, but I cannot allow the fact that I think he had such a terrible thing happen to him dictate what the legal analysis is going to be in the case.

I think that's it. Thank you all for coming in. We'll adjourn.

(Proceedings adjourned at 4:47 p.m.)

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIV. NO. 3:03CV1792 (AWT)
NOVEMBER 22, 2004

CHRISTOPHER RUSSO,

Plaintiff,

VS.

CITY OF BRIDGEPORT, *et al,*

Defendants.

56(a) STATEMENT OF DEFENDANTS ROSA, DEPIETRO, BORONA AND SHERBO

1. The Defendant Police Officer, John Rosa, is a police officer employed by the Bridgeport Police Department (Incident Report, August 1, 2002—Investigative Report, Detective DePietro).

2. On August 1, 2002, Police officer John Rosa responded to a robbery at the gas station at 540 Boston Avenue in the City of Bridgeport. He forwarded the case to the Detective Bureau (Incident Report of Rosa).

3. On the night of August 1, 2002, Mr. Adnan Saleem was working as the clerk of the store (Incident Report, Statement of Saleem, August 1, 2002).

4. In the early morning hours, while Mr. Saleem was working at the Amoco Station, a white male in his late twenties, early thirties, with a shaved head and a towel around his neck, robbed the Amoco Station (Statement of Saleem, August 1, 2002).

5. The Amoco Station had a surveillance video camera which was operating o August 1, 2002 (Report of Detective DePietro—Warrant application of Detective DePietro).

6. Sergeant Joseph Sherbo assigned Detective Jeremy DePietro to investigate the robbery (Report of DePietro).

7. Sergeant Sherbo witnessed the statement of Saleem and took the oath of Detective DePietro for the warrant application (Saleem statement and warrant application).

8. Sergeant Sherbo was not an investigatory officer (see DePietro Investigative Report).

9. The Plaintiff does not know Sergeant Sherbo and could not provide any information of his involvement with the investigation (Deposition of Christopher Russo).

10. Detective Borona was a police officer assigned to the Detective Bureau on August 1, 2002 (Affidavit of Detective Borona).

11. Detective Borona accompanied Detective DePietro to the Amoco Station to follow-up on the investigation (Statement of DePietro).

12. Detective DePietro was given the surveillance videotape when he was at the Amoco Station (Report of DePietro).

13. DePietro viewed the videotape at the police station but had some difficulty getting a clear and clean view of the subject in the video who committed the robbery (Affidavit of DePietro).

14. The videotape was a four quadrant view and operated in a faster speed with sporadic views (Affidavits of DePietro, Borona and Donovan).

15. Neither Detective DePietro nor Detective Borona could get a clear picture of the suspect to match with photos in the Bridgeport Police Department database, so they took

the videotape to St. Vincent's Hospital to use the photo-video equipment to get photos of the suspect from the video (Affidavits of Borona and DePietro).

16. The photos from the video showed the neck and head of the suspect only and were used to do a photo lineup of individuals that matched the photos (Affidavits of Borona and DePietro).

17. Neither DePietro nor Borona specifically selected the photos but were randomly established with the found characteristics (Affidavit of DePietro).

18 Prior to August 1, 2002, neither DePietro nor Borona knew or had ever arrested Christopher Russo (Affidavits of DePietro and Borona—Request to Admit of the Plaintiff Russo—deposition testimony of Russo).

19. Mr. Adnan Saleem was interviewed by Detective DePietro on August 1, 2002 and reviewed a photo array of possible suspects. he chose the first photo, circled it and initialed it (Statement of Saleem—Photo array).

20. Mr. Saleem indicated that he was "100 percent" sure the person he picked in the photo array was the person who robbed him (Statement of Saleem).

21. Detective DePietro applied for a warrant to the Superior Court based upon the investigation (Warrant application of DePietro).

22. After Mr. Russo picked the photo, the Detective was able to get a name and address to match the photo. It was first learned the name was Christopher Russo after the photo lineup (Deposition of DePietro).

23. Neither Detective DePietro nor Detective Borona arrested Mr. Russo on September 18, 2002 on the warrant application. Detective Robert Martin was the police officer who arrested Mr. Russo (Affidavits of DePietro and Borona—Incident Report of Detective Martin).

24. Detective Borona never saw Mr. Russo before the arrest, on the day of the arrest, or after the arrest (Affidavit of Borona).

25. Detective DePietro saw Mr. Russo for a brief period of time, but Mr. Russo did not talk to him (Affidavit of DePietro—Request to Admit of Russo).

26. Detective DePietro did not place the videotape in the property room, but had it in his locked drawer in his desk (Deposition of DePietro).

27. When the State Attorney requested the videotape to prepare their case, they received it from Jeremy DePietro (Affidavit of Donovan).

28. No one from the State Attorney requested the videotape before November 19, 2002 (Affidavit of John Donovan).

29. The Office of the State. Attorney did not receive a request to review the tape by Russo's counsel until December 2, 2002 (Affidavit of John Donovan).

30. On January 3, 2003, because of the poor quality of the tape and inability to clearly view, the tape was sent to the State Forensic' Lab and returned on I January 22, 2003 (Affidavit of John Donovan).

31. The information available to Detective DePietro was supportive of a finding that Mr. Russo committed the robbery (Transcript of criminal action, April 23, 2003).

32. The personnel in the Office of the State Attorney's office believed that Mr. Russo was the person who committed the robbery based upon the photos, Video and identification (Criminal transcript, April 23, 2003)

THE DEFENDANTS
JEREMY DEPIETRO, CHRISTOPHER BORONA, JOSEPH SHERBO AND JOHN ROSA

BY: /s/ Barbara B. Massaro
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APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIV. NO. 3:03CV1792 (AWT)

CHRISTOPHER RUSSO

Plaintiff,

v

CITY OF BRIDGEPORT, *et al*

Defendants.

56(a) STATEMENT OF DEFENDANT
CITY OF BRIDGEPORT

1. The City of Bridgeport is a municipal corporation organized and existing under the laws of the State of Connecticut (Defendant's answer to complaint—Admitted).

2. The Chief of Police is the individual in charge of the day-to-day management of the Bridgeport Police Department subject to the control of the Mayor and Board of 1 Police Commissioners (Charter of the City of Bridgeport).

3. The Board of Police Commissioners has the general management and control of the Police Department and make all needful rules and regulations for its government (Charter of the City of Bridgeport).

4. In the early morning hours, while Mr. Saleem was working at the Amoco Station, a white male in his late twenties, early thirties, with a shaved head and a towel around his neck, robbed the Amoco Station (Statement of Saleem, August 1, 2002).

5. The Amoco Station had a surveillance video camera which was operating on August 1, 2002 (Report of Detective DePietro—Warrant application of Detective DePietro).

6. Sergeant Joseph Sherbo assigned Detective Jeremy DePietro to investigate the robbery (Report of DePietro).

7. Sergeant Sherbo witnessed the statement of Saleem and took the oath of Detective DePietro for the warrant application (Saleem statement and warrant application).

8. Sergeant Sherbo was not an investigatory officer (see DePietro Investigative Report).

9. The Plaintiff does not know Sergeant Sherbo and could not provide any information of his involvement with the investigation (Deposition of Christopher Russo).

10. Detective Borona was a police officer assigned to the Detective Bureau on August 1, 2002 (Affidavit of Detective Borona).

11. Detective Borona accompanied Detective DePietro to the Amoco Station to follow-up on the investigation (Statement of DePietro).

12. Detective DePietro was given the surveillance videotape when he was at the Amoco Station (Report of DePietro).

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15. Neither Detective DePietro nor Detective Borona could get a clear picture of the suspect to match with photos in the Bridgeport Police Department database, so they took the videotape to St. Vincent's Hospital to use the photo-video

equipment to get photos of the suspect from the video (Affidavits of Borona and DePietro).

16. The photos from the video showed the neck and head of the suspect only and were used to do a photo lineup of individuals that matched the photos (Affidavits of Borona and DePietro).

17. Neither DePietro nor Borona specifically selected the photos but were randomly established with the found characteristics (Affidavit of DePietro).

18. Prior to August 1, 2002, neither DePietro nor Borona knew or had ever arrested Christopher Russo (Affidavits of DePietro and Borona—Request to Admit of the Plaintiff Russo—deposition testimony of Russo).

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21. Detective DePietro applied for a warrant to the Superior Court based upon the investigation (Warrant application of DePietro).

22. After Mr. Russo picked the photo, the Detective was able to get a name and address to match the photo. It was first learned the name was Christopher Russo after the photo lineup (Deposition of DePietro).

23. Neither Detective DePietro nor Detective Borona arrested Mr. Russo on September 18, 2002 on the warrant application. Detective Robert Martin was the police officer who arrested Mr. Russo (Affidavits of DePietro and Borona—Incident Report of Detective Martin).

24. Detective Borona never saw Mr. Russo before the arrest, on the day of the arrest, or after the arrest (Affidavit of Borona).

25. Detective DePietro saw Mr. Russo for a brief period of time, but Mr. Russo did not talk to him (Affidavit of DePietro—Request to Admit of Russo).

26. Detective DePietro did not place the videotape in the property room, but had it in his locked drawer in his desk (Deposition of DePietro).

27. When the State Attorney requested the videotape to prepare their case, they received it from Jeremy DePietro (Affidavit of Donovan).

28. No one from the State Attorney requested the videotape before November 19, 2002 (Affidavit of John Donovan).

29. The Office of the State Attorney did not receive a request to review the tape by Russo's counsel until December 2, 2002 (Affidavit of John Donovan).

30. On January 3, 2003, because of the poor quality of the tape and inability to clearly view, the tape was sent to the State Forensic Lab and returned on January 22, 2003 (Affidavit of John Donovan).

31. The information available to Detective DePietro was supportive of a finding that Mr. Russo committed the robbery (Transcript of criminal action, April 23, 2003).

32. The personnel in the Office of the State Attorney's office believed that Mr. Russo was the person who committed the robbery based upon the photos, Video and identification (Criminal transcript, April 23, 2003)

THE DEFENDANT
CITY OF BRIDGEPORT

BY: /s/ Arthur C. Laske III

ARTHUR C. LASKE III
Assistant City Attorney
OFFICE OF THE CITY ATTORNEY
999 Broad Street
Bridgeport, CT 06604
Tel. No. 576-7647
Fed. Bar #03773

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NO.: 3: 03 CV 1972 (AWT)

CHRISTOPHER RUSSO
Plaintiff,

v

CITY OF BRIDGEPORT, OFFICER JEREMY DEPIETRO, OFFICER JOHN ROSA, DETECTIVE CHRISTOPHER BORONA, SERGEANT JOSEPH SHERBO
Defendants.

PLAINTIFF'S LOCAL RULE 56(a)2 STATEMENT

I. STATEMENT ADMITTING/DENYING FACTS

1. Admitted.

2. Admitted.

3. Admitted.

4. Denied (Exhibit 7).

5. Admitted.

6. Admitted.

7 Admitted.

8. Denied (Exhibit 8; and warrant, Application of Detective DePietro-Defendant's Exhibit C).

9. Denied (Exhibit 8; and warrant, Application of Detective DePietro-Defendant's Exhibit C).

10. Admitted.

11. Admitted.

12. Admitted.

13. Denied (Exhibit 7).

14. So much that states the videotape was a four quadrant view is admitted, the balance the plaintiff has insufficient knowledge and can neither admit nor deny (Exhibit 7).

15. So much as states that Detectives DiPietro and Borona took the tape to St. Vincent's Hospital to use the photo/video equipment is admitted, the balance of the paragraph the plaintiff has insufficient knowledge and can neither admit nor deny (Exhibit 7).

16. Admitted.

17. The plaintiff has insufficient knowledge and can neither admit nor deny (Exhibits 10, 13).

18. So much as states that prior to August 01, 2002, neither DePietro nor Borona knew Christopher Russo is denied (Exhibits 20, 21), as to the balance the plaintiff has insufficient knowledge and can neither admit nor deny (Exhibits 10, 13).

19. Admitted.

20. The plaintiff has insufficient knowledge and can neither admit nor deny (Exhibit 4).

21. The plaintiff has insufficient knowledge and can neither admit nor deny (Exhibit 2, 3, 4).

22. Denied (Exhibits 10, 13).

23. Admitted.

24. Denied (Exhibits 20, 21).

25. Denied (Exhibits 20, 21),

26. The plaintiff has insufficient knowledge and can neither admit nor deny (Exhibit 16).

27. The plaintiff has insufficient knowledge and can neither admit nor deny (Exhibit 10).

28. The plaintiff has insufficient knowledge and can neither admit nor deny (Exhibit 10).

29. Denied (Exhibit 20).

30. Denied (Exhibits 7, and the videotape, and enhanced version and video cassette).

31. Denied (Exhibits 4, 5, 7, and the video tape, and enhanced version)

32. Denied (Exhibit 23).

II. ISSUES OF MATERIAL FACT IN WHICH THERE IS A GENUINE ISSUE TO BE TRIED

I. Officer DePietro

1. Did officer DePietro know, or should have known, that Chris Russo was not the perpetrator of the robbery, and did he take reasonable steps to bring this information, Dr exculpatory materials to the attention of proper authorities, his supervisors, officers above him in the chain of command, co-investigators, the officer handling the warrant and arrest, and the state's attorneys prior to and during the 7 months of Russo's confinement? (Exhibits 3, 4, 5, 7, 17, 18, 20, 21, 22, 23)

2. Did officer DePietro negligently, recklessly, or intentionally fail to review Russo's prior arrest records which revealed that he had tattoos on his arms and legs, as well as his large size at least in 2001 and which would have contradicted the victim's identification? (Exhibits 2, 3, 4)

3. Did officer DePietro negligently, recklessly, or intentionally fail to view and analyze the videotape of the robbery

which easily showed the tattoos on the arms of the perpetrator? (Exhibits 1, 7)

4. Did officer DePietro negligently, recklessly, or intentionally try to extort a false confession from Russo during interrogation, by promising a lesser sentence recommendation or withholding methadone treatment on 09118/02? (Exhibit 20)

5. Did officer DePietro negligently, recklessly, or intentionally lie to Russo -during the interrogation that the perpetrator of the robbery had tattoos just like his? (Exhibit 20

6. Did officer DePietro negligently, recklessly, or intentionally withhold or hide relevant and material exculpatory evidence from Chris Russo or his attorney, or other officers in the police department, including but not limited to the video tape? (Exhibit 2, 3, 4, 7

7. Did officer DePietro negligently, recklessly or intentionally violate department regulations concerning the failure to book in evidence into the evidence room? (Exhibit 17, 18)

8. Based on the comparison of Russo's visible features during the 09/18/02 interrogation, with the 08/01/02 video tape, the prior arrest records, and the written description of the perpetrator, did DePietro know, or should he have known that Russo was not the perpetrator of the robbery at some point in time? (Exhibits 1, 2, 3)

9. Did DePietro ever look at the video tape to determine whether the perpetrator had tattoos just like Russo's? (Exhibits 8, 9, 10, 11, 12)

10. Did DePietro's duties end on 09/18/02 after Russo's interrogations such that he had no further duty to examine the videotape to determine the presence of tattoos on the perpetrator? (Exhibits 20, 21)

11. Did DePietro have a duty to inform the state's attorney that Russo's prior arrest records indicated that he had tattoos in 2001, when the state's attorney insisted that Russo prove his innocence by obtaining new photographs showing that he had tattoos from before (prior to 08101102) and he did not engrave the tattoos on to his arms between 08101/02 and 09/18/02? (Exhibits 4, 22)

12. Did DePietro improperly handle the investigation during the following time periods:

a. The investigation from 08/01/02 to 09117/02 (Exhibits 8, 9, 10, 11, 12)

b. The interrogation from 09/17/02 to 09/18/02 (Exhibits 20, 21)

c. The confinement after 09/18/02 by failing to take another look at the videotape? (Exhibits 17, 18)

II. Officer Borona

1. As officer DePietro's co-investigator during the review of the video from 08/01/02 to 08/08/02 and for his part in the interrogation of 09/18/02, did officer Borona know, or should have known, that Chris Russo was not the perpetrator of the robbery, and did he take reasonable steps to bring this information, or exculpatory materials to the attention of proper authorities, his supervisors, officers above him in the chain of command, co-investigators, the officer handling the warrant and arrest, and the state's attorneys prior to and during the 7 months of Russo's confinement? (Exhibit 13)

2. Did officer Borona negligently, recklessly, or intentionally fail to review Russo's prior arrest records which revealed that he had tattoos on his arms and legs, as well as his large size at least in 2001 and which would have contradicted the victim's identification? (Exhibits 2, 3, 4, 13)

3. Did officer Borona negligently, recklessly, or intentionally fail to view arid analyze the videotape of the robbery

which easily showed the tattoos on the arms of the perpetrator? (Exhibit 7)

4. Did officer Borona negligently, recklessly, or intentionally try to extort a false confession from Russo during interrogation, by promising a lesser sentence recommendation or withholding methadone treatment on 09/18/02? (Exhibits 20, 21)

5. Did officer Borona negligently, recklessly, or intentionally lie to Russo during the interrogation that the perpetrator of the robbery had tattoos just like his? (Exhibit 2C, 21)

6. Did officer Borona negligently, recklessly, or intentionally withhold or hide relevant and material exculpatory evidence from Chris Russo or his attorney, or other officers n the police department, including but not limited to the video tape? (Exhibit 7)

7. Did officer Borona negligently, recklessly or intentionally violate department regulations concerning the failure to book in evidence into the evidence room? (Exhibits 17, 18)

8. Based on the comparison of Russo's visible features during the 09/18/02 interrogation, with the 08101/02 video tape, the prior arrest records, and the written description of the perpetrator, did Borona know, or should he have known that Russo was not the perpetrator of the robbery at some point in time? (Exhibit 1, 2, 3)

9. Did Borona ever look at the video tape to determine whether the perpetrator had tattoos just like Russo's? (Exhibit 7)

10. Did Borona's duties end on 09/18/02 after Russo's interrogations such that he had no further duty to examine the videotape to determine the presence of tattoos on the perpetrator? (Exhibit 20, 21)

11. Did Borona have a duty to inform the state's attorney that Russo's prior arrest records indicated that he had tattoos

in 2001, when the state's attorney insisted that Russo prove his innocence by obtaining new photographs showing that he had tattoos from before (prior to 08/01/02) and he did not engrave the tattoos on to his arms between 08/01/02 and 09118/02? (Exhibits 4, 22)

12. Did Borona improperly handle the investigation during the following time periods:

a. The investigation from 08/01102 to 09/17/02 (Exhibit 13)

b. The interrogation from 09/17/02 to 09/18/02 (Exhibits 20, 21)

c. The confinement after 09/18/02 by failing to take another look at the videotape? (Exhibits 17, 18)

III. Sargent Sherbo

1. As overall supervisor of the arrest, reviewing authority of the criminal investigation, participant in obtaining the arrest warrant, and authority above DePietro in the chain of command, did officer Sherbo know, or should have known that, Chris Russo was not the perpetrator of the robbery, and did he take reasonable steps to bring this information, or exculpatory materials to the attention of proper authorities, his supervisors, officers above him in the chain of command, co-investigators, the officer handling the warrant and arrest, and the state's attorneys prior to and during the 7 months of Russo's confinement? (Exhibits 2, 3, 4, 17, 18, 19)

2. Did officer Sherbo negligently, recklessly, or intentionally fail to review Russo's prior arrest records which revealed that he had tattoos on his arms and legs, as well as his large size at least in 2001 and which would have contradicted the victim's identification? (Exhibits 2, 3, 4)

3. Did officer Sherbo negligently, recklessly, or intentionally fail to view and analyze the videotape of the robbery

which easily showed the tattoos on the arms of the perpetrator? (Exhibit 7)

4. Does officer Sherbo bear some responsibility for negligently, recklessly or intentionally violating department regulations concerning the failure to book in of evidence into the evidence room? (Exhibits 17, 18)

5. Did officer Sherbo have a duty to look at the video tape to determine whether the perpetrator of the robbery had tattoos just like Russo's? (Exhibit 4)

6. Did Sherbo's duties end on 09/18/02 after Russo's interrogation such that he had no further duty to examine the video tape to determine the presence of tattoos on the perpetrator? (Exhibits 10, 20, 21)

7. Did Sherbo have a duty to inform the state's attorney that Russo's prior arrest records indicated that he had tattoos in 2001, when the state's attorney insisted that Russo prove his innocence by obtaining new photographs showing that he had tattoos from before (prior to 08/01/02) and he did not engrave the tattoos on to his arms between 08/01/02 and 09/18/02? (Exhibit 2, 3)

8. Did Sherbo improperly supervise the handling of the investigation during the following time periods:

a. The investigation from 08/01/02 to 09/17/02 (Exhibit 4)

b. The interrogation from 09/17/02 to 09/18/02 (Exhibit 20, 21)

c. The confinement after 09/18/02 by failing to take another look at the videotape? (Exhibit 17, 18)

IV. Officer Rosa

1. Did officer Rosa know, or should he have known, that Chris Russo was not the perpetrator of the robbery, and did he take reasonable steps to bring this information, o exculpatory

materials to the attention of prior authorities, his supervisors, officers above him in the chain of command, co-investigators, the officer handling the warrant and arrest, and the state's attorneys prior to and during the 7 months of Russo's confinement? (Exhibits 2, 3, 4)

2. Did officer Rosa have a duty to communicate with officers DePietro and Borona during the investigation and bring to their attention certain facts that the victim's description of the perpetrator did not match the photo array, the prior arrest records of Russo, or the 09118/02 arrest report? (Exhibits 4, 7)

3. Given his access to the arrest information and his role in responding to the incident, did officer Rosa negligently, recklessly, or intentionally fail to review Russo's prior arrest records which revealed that he had tattoos on his arms and legs, as well as his large sire in at least in 2001 and which would have contradicted the victim's identification? (Exhibits 4, 14)

4. Did officer Rosa conspire with officers DePietro and Borona to negligently, recklessly, or intentionally violate department regulations concerning the failure to book in evidence into the evidence room? (Exhibits 17, 18)

5. Given his access to the arrest information and his role in responding to the incident, did Rosa have a duty to look at the videotape to determine whether the perpetrater had tattoos just like Russo's and assist and communicate with DePietro and Borona? (Exhibits 8, 9, 10, 11, 12, 14)

6. Did Rosa's duties end on 08101/02 after his arrival at the robbery scene, his assessment of the robbery, and his knowledge that there was a videotape, such that he had no further duty to examine the video tape to determine the presence of tattoos on the perpetrator? (Exhibits 7, 8, 10, 11, 12, 14)

7. As part of the investigation team, did Rosa have a duty to inform the state's attorney that Russo's prior arrest records indicated that he had tattoos in 2001, when the state's attorney insisted that Russo prove his innocence by obtaining new photographs showing that he had tattoos from before (prior to 08/01/02) and he did not engrave the tattoos on to his arms between 08/01/02 and 09/18/02? (Exhibits 2, 3, 4, 14)

THE PLAINTIFF
Christopher Russo

BY: /s/ Jeffery D. Ginzberg, for
Perelmutter, Potash & Ginzberg
11 Bank Street
Seymour, Connecticut 06483
CT Federal Bar No.: 12476
Telephone: (203) 888-2501
Fax: (203) 888-7928

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

No. 3:03CV1792 (AWT)

CHRISTOPHER RUSSO,

Plaintiff,

v.

CITY OF BRIDGEPORT, OFFICER JEREMY DEPIETRO, OFFICER JOHN ROSA, DETECTIVE CHRISTOPHER BARONA, SERGEANT JOSEPH SHERBO,

Defendants.

PLAINTIFF'S LOCAL RULE 56(a)2 STATEMENT IN RESPONSE TO CITY'S MOTION FOR SUMMARY JUDGMENT

The plaintiff adopts the 56(a)2 Statement in Response to the Motion for Summary Judgment of the individual defendants except as modified herein.

1. STATEMENT ADMITTING/DENYING FACTS:

1. Admitted

2. Admitted

3. Admitted

4. Deny description of robber's hair (see Plaintiff Exhibit 4, Incident Report attached to 56(b)2 Statement in Response to individual defendants' Motion for Summary Judgment. (hereinafter "Individual Exhibits"). The remainder of Paragraph 4 admitted.

5. Admitted

6. Admitted

7. Admitted

8. Denied

9. Admitted but irrelevant.

10. Admitted

11. Admitted

12. Admitted

13. Admit DePietro and Barona viewed tapes but do not know what they mean by "some difficulty getting a clear view."

14. Admit DePietro and Barona viewed tapes but do not know what they mean by "some difficulty getting a clear view."

15. Admit tape taken to St. Vincent's Medical Center.

16. Denied. Photo appears to be mug shot not still from video tape which appears to have been taken at a different angle. Cf. Defendant Exhibit E.

17. Denied. Selection of photographs appears to be deliberate rather than random.

18. Plaintiff has insufficient knowledge to affirm or deny. See Individual Exhibits 10 through 13.

19. Admitted

20. Plaintiff has insufficient knowledge to affirm or deny.

21. Plaintiff admits that DePietro applied for a warrant but denies that the conduct of the defendant DePietro constituted "an investigation".

22. Denied. See Individual Exhibits 10 and 13.

23. Admitted

24. Denied. See Individual Exhibits 20 and 21.

25. Denied. See Individual Exhibits 20 and 21.

26. Admit that DePietro admitted that he put the video tape in his desk drawer in violation of Department Regulations. See Individual Exhibit 10.

27. Admit tape not turned over until November 25, 2002 per Donovan Affidavit Defendant Exhibit G. Paragraph 11

28. Admitted, but the failure to turn over the tapes without the specific request of the State's Attorney's Office was in violation of Section 54-86c(c) Conn. Gen. Stat.

29. Admitted but the failure to turn over the tapes without the specific request of the State's Attorney's Office was in violation of Section 54-86c(c) Conn. Gen, Stat.

30. Admitted but see Paragraphs 15 and 16 of Defendant's 56(a)1 Statement. The warrant was apparently based on "unclear pictures".

31. Denied. See Individual Exhibits 4, 5, 7, 24, enhanced video tape and Exhibit 23.

II DISPUTED ISSUES OR ISSUES NOT IN DISPUTE WHICH WOULD REQUIRE AND CITY'S MOTION FOR SUMMARY JUDGMENT BE DENIED.

1. Individual defendants acted in accordance with their training and supervision received from the defendant City of Bridgeport toward the defendant in this case. (Exhibit 1. Defendant City's November 8, 2004 Supplemental Response to Request to Admit especially paragraphs 11 and 12.)

2. The defendant City's Police Department noted the plaintiff's tattoos before September 18, 2002 (id. Paragraph 4).

3. Three convicted criminals were retained on the Bridgeport Police Department as Police Officers after their convictions, were promoted after their convictions (Id, Paragraphs 14 through 21.

4. Bridgeport Police Officers may refuse to cooperate with the State's Attorney's Office investigating theft of money during searches by Police Officers, so long as the police officers state they believe "in good faith" that cooperation with the State's Attorney will incriminate them, and such refusal has no effect on their status in the Police Department or their chances for promotions. (Id. Paragraphs 21 and Exhibit 2 Transcript of Testimony of Chief Sweeney before Judge Eginton in *Felsman v. Bridgeport*, pages 36 and 37).

5. Defendant DePietro was not trained in how to recognize exculpatory evidence or what to do with it. (Exhibit 3, pages 13-15, 17-20)

6. Keeping the videotape of the robbery showing that the robber had no tattoos on his arm locked in defendant DePietro's desk drawer is in violation of Police Department Regulations. (Individual Exhibit 17) or not (Exhibit 1).

7. The defendant DePietro was not sure if he told anybody before June 9, 2004 whether the videotape of the robbery was logged in. (Exhibit 3, Pages 52-53).

8. DePietro and, presumably, Barona, and "possibly" Sherbo, saw the video tape of the robber and still photographs made from the video tape during the week after the robbery claim not to have noticed that the robber had no tattoos on his arms. (Exhibit 3, pages 57-60). The plaintiff denies defendant police officers could have seen the tape and not notice that the robber's aims had no tattoos. That is for a jury to decide.

9. The defendant DePietro put the still photographs made from the video tape in a case jacket and put that jacket in his filing cabinet but did not inform the State's Attorney of that

exculpatory information in violation of Section 54-86c(c) Conn. Gen. Stat. He still considers the case of State v. Russo concerning the robbery to be an "open case". (Exhibit 3, pages 62-63). It is for a jury to determine if that sworn testimony of DePietro, which has been embraced by the defendant City is credible.

10. Even if DePietro knew the robber had no tattoos but that the defendant did have tattoos on his arms at the time of the robbery would have had no effect on him. (Exhibit 3, page 67).

11. No supervisor or superior of DePietro of Barona discussed the case, the dismissal of the charges against the plaintiff or their handling of the case after the charges against the plaintiff were dismissed. (Exhibit 3, pages 70-71).

THE PLAINTIFF

BY /s/ Burton M. Wwinstein
BURTON M. WEINSTEIN
Weinstein, Weiner, Ignal, Napolitano
& Shapiro, P.C.
P.O. Box 9177
Bridgeport, CT 06604
(203) 333-1177
Juris #05227

BEST AVAILABLE COPY

DEPARTMENT OF POLICE
BRIDGEPORT, CONNECTICUT

INCIDENT REPORT

☐ UNFOUNDED ☐ ARREST ☐ ACTIVE
☐ OPEN ☐ CLOSED _____ ☐ CLEARED _____
☐ WARRANT ADVISED APPROVED:

EXHIBIT A

1. INCIDENT NUMBER	2. INVESTIGATIVE CASE NO.	3. TYPE OF CRIME / INCIDENT	
02-08-01-030	02011556	Robbery	0302

5. DISPATCHED	M 8 D 1 YO 2 423	7. TIME OF OCCURENCE	M 8 D 1 YO 2 422	8. DISPATCHED TO: 540 BOSTON AVE
6. ON SCENE	M 8 D 1 YO 2 425			

9. LOCATION OF CRIME / INCIDENT	10. TYPE OF PREMISES	11. SECTOR	12. DEPT. AREA
540 BOSTON AVE	AUTO SERVICE CENTER	GREEN	31

13. NO. OF VICT	14. VICTIM'S NAME (LAST, FIRST, MIDDLE)	15. VICTIM'S COMPLETE ADDRESS	16. HOME TELEPHONE	17. BUSINESS/SCHOOL TELEPHONE
1	SALWEEM, ADNAN	285 LAFAYETTE ST BRIDGEPORT, CT.	1336-2388	( )

18. Age	19. Date of Birth	20. Race	21. Sex	22. SSN	23. Place of Employment/School Attending (Complete Address)
22	3/9/80	I	M	—	

24. Victim Injured ☐ Yes ☐ No	25. Nature of Injury(s)	26. Hospital	Admitted? ☐ Yes ☐ No	27. Attending Physician

28. Indicate with proper codes in boxes provided persons relationship to investigation - (V2) Victim #2 (W1) Witness #1, (W2) Witness #2, (R) Reporting Person, (D) Discover, (PK) Person Knowledgeable, (PC) Person Canvassed (Indicate also if appropriate) (NI) Not Interviewed, or (X) Provided no viable Information.

29. Individual's Name	30. DOB / Age	31. Address / Address Checked	32. Telephone Numbers
			(H) (BS)
			(H) (BS)
			(H) (BS)
			(H) (BS)
			(H) (BS)

33. Indicate Who Can Identify Suspect	(R) Reporting Person, (D) Discoverer, (V1) Victim #1,	(W1) Witness #1, (PK) Person Knowledgeable Esc.
34. Suspect #1 (Name - Include Any AKA Info)	Suspect #2 (Name - Include Any AKA Info)	Suspect #3 (Name - Include Any AKA Info)
35. Suspect #1 May Be Located At	Suspect #2 May Be Located At	Suspect #3 May Be Located At
36. Suspect #1 Description: WHITE MALE 5'6 to 5'8 (MED BUILD) very short hair (crew) Blond hair BLUE T-shirt JEANS (PINK TOWEL on neck) LATE 30's	Suspect #2 Description	Suspect #3 Description
37. Arrested ☐ Yes ☐ No	Arrested ☐ Yes ☐ No	Arrested ☐ Yes ☐ No

38. Vehicle Status ☐ Stolen ☐ Recovered ☐ Suspect ☐ Target	39. Make/Model	40. Year	41. Type	42. Colors (Top/Bottom)	43. Identifying Characteristics

44. License Plate No. & Registration	State	Year	Type	45. Property Description & Identifying Information	46. Alarm/NCIC No.	47. Loss Value	48. Recvd Val.

49. Type of Property Taken/Damaged	50. Property Description & Identifying Information		
CURRENCY	6-8 20 Dollers Bills	—	

51. Point of Illegal Entry/Means of Attack	52. Type of Instrument/Weapon (Describe)	53. Loss-Total	54. Recvd Tot
	UNKNOWN		

55. Narrative: Summarize Details of Crime, including Progression of Events, Names of Other Officers or Units Assisting on Scene. For any additional information which is an Extension of any of the above blocks, Indicate Block Number at left.

Block #

UPON ARRIVAL, ADNAN SALWEEM, Employee of the AMOCO STATION STATED being Robbed by A WHITE MALE AT APPROX. 04.10 hours THE SUSPECT APPROACHED THE WINDOW ASKING FOR A BOTTLE OF SODA OF AN UNKNOWN BRAND, (PRESUMABLY TO GET MR SALWEEM TO OPEN THE DOOR AND LET HIM IN) THE SUSPECT THEN LEFT AND CAME BACK 2-3 MINUTES LATER AND PUT HIS HAND IN THE CASH DRAWER HOLDING IT OPEN STATING "GIVE ME ALL YOUR TWENTYS OR I'LL SHOOT YOU!" MR. SALWEEM

56. Physical Evidence	57. Property Receipt No.	58. Related Incident Nos.	59. Related Arrest Nos.	60. Related Casualty Nos.

61. Reporting Officer(s)	Cap. & Sect.	62. Required follow up/Recommendations	Page
PO JON ROSA	582 32	D.B	1 of 4
		63. Supervisor Review YM Concur ☐ Yes ☐ No	

APPENDIX G
983

ARTMENT OF POLICE
RIDGEPORT, CONNECTICUT

SUPPLEMENTAL REPORT

STATUS CHANGE _____

APPROVED _____

D.P. | I | II
UCR | III | IV
V | VI

1. REPORT TYPE: (√) NARRATIVE CONTINUATION ( ) ADDITIONAL INFORMATION ( ) INVESTIGATIVE PROGRESS ( ) CLEAR UP/RECOVERED PROPERTY

2. OFFENSE / INCIDENT	3. LOCATION OF OFFENSE (House No. and Street)	
Robbery	540 Boston Ave.	
4. VICTIMS NAME (Last, First, Middle) (If Firm, Name)	5. DATE OF OCCURRENCE	7. INCIDENT NO.
	August 1, 2002	02-08-01-030
Salween, ADNAN	6. VICTIMS ADDRESS	8. INVESTIGATIVE CASE NO.

BLOCK #

Then handed the Suspect 6-8 $20. Dollars bills after seeing A large Bulge in his pocket believing it was A handgun. The Suspect then fled Down the Area of Beecher Street. P/o and other units Canvassed The Area and A description was given to All units. MR. Salween Stated that he would be able to I.D. The Suspect Again and there is A Videotape available. P/o told MR. Salween to Advise his Supervisor to make The tape available for Bridgeport Detectives

9. REPORTING OFFICER	CAD NO.	10. DATE REPORT PREPARED	
P/O John Rosa	565	August 1, 2002	PAGE 2 OF 2

11. SUPERVISOR'S REVIEW CAD NO. 414 (√) CONCUR RECOMMEND _____

EXHIBIT B

BRIDGEPORT POLICE DEPARTMENT

INCIDENT NO	DATE	TIME STARTED	TIME ENDED	PLACE OF STATEMENT
02D1556	08/01/02	11:15 PM	12:02 AM	HQ

NAME (FIRST, LAST)	STREET NO, STREET, CITY, STATE	PHONE
Adnan Saleem	285 Laffayette Street 203 Bridgeport CT	203 336 2388

DATE OF BIRTH	STATEMENT TAKER		
03/09/80	Det. Jeremy C. DePietro 19423	OF THE	Bridgeport Police Department

I make the following voluntary statement. I have been advised that any statement(s) made herein which I do not believe to be true and which statement is intended to mislead a public servant in the performance of his/her official function, is a crime under C.G.S. section 53a-157.

Q. Did you come here on your own free will tonight?
A. Yes

Q. Why are you here?
A. To talk about when I got robbed at the Amoco gas station.

Q. Tell me what happened.
A. I was working as the cashier at the Amoco gas station at 540 Boston Avenue. I work nights 11pm to 7am. It was about 4 o'clock in the morning when this guy came to the front door and wanted to get in. I told him that we didn't let people in at night and I asked him what he wanted. He said that he wanted a soda. He didn't say what kind of soda so I asked him. He told me to go to the back of the store and that he would show me. When I got to the back of the store, he walked away. I didn't see which way he walked. I went back to the other side of the store and made some coffee. Ten I went to the area of the cash register. The guy came back to the outside drawer by the register. He said that he had a gun in his pocket. He told me to give him all of the twenty dollar bills. I told him that I could not do that. He told me that if I didn't give him the money, that he was going to shoot me. I reached in the register and gave him 6 or eight twenty dollar bills. Then the guy ran to the back of the store toward Beecher Street. I called 911 and the police came about 10 minutes later.

Q. What did the guy who robbed you look like?
A. He was a white male. He was in his late twenties or early thirties. He had a blue shirt, blue jeans and a pink towel around his neck. He had a shaved head and he did not speak with any accents. I didn't actually see the gun but I could see the outline of it in his pocket. I would definitely recognize him if I saw him again.

By affixing my signature to this statement, I acknowledge that I have read it and/or have had it read to me and it is true to the best of my knowledge and belief.

Witness: Detective Jeremy C DePietro #19 Signature Adnan

Witness:

Personally appeared the signer of the foregoing statement and made oath before me to the truth of the matters contained therein.

Subscribed and sworn to before me on this 1st day of August 2002 under authority of the Connecticut General Statutes, 1-24

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BRIDGEPORT POLICE DEPARTMENT

STATEMENT OF Adnan Saleem

Q. Do you have an operating video camera in the Amoco station?
A. Yes, it works very well.

Q. I am going to show you photo array number one containing eight males. Look at the photos and tell me if you recognize anyone.

A. The first picture. He is the guy who robbed me with the gun at the Amoco station last night. I am positive. I am one hundred percent sure.

Q. After reading this statement and finding it to be true and correct, will you sign it?
A. Yes.

Q. Did you tell the truth?
A. Yes.

Q. How were you treated by this investigator?
A. Very good.

By affixing my signature to this statement, I acknowledge that I have read it and/or have had it read to me and it is true to the best of my knowledge and belief.

Witness: Detective Jeremy Deluca Signature: A Saleem

Witness:

Personally appeared the signer of the foregoing statement and made oath before me to the truth of the matters contained therein.

Subscribed and sworn to before me on this 1st day of August 2002 under authority of the Connecticut General Statutes, 1-24 Sgt J Shelton

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Bridgeport Police Department

CRIMINAL INVESTIGATION REPORT - DETECTIVE DIVISION

C

REPORT TYPE	CASE #	FILE #
Narrative	02D1556	020801-030

CODE	TYPE OF CRIME/INCIDENT	DATE OF CRIME/INCIDENT	TIME	DATE OF REPORT
0302	Robbery	08/01/02	423:00	08/01/02

On 08/01/02, I was assigned by Sergeant Sherbo to investigate a report of a robbery at 540 Boston Avenue. This incindent took place on 08/01/02 at approximately 0423 hours. Patrol Officers responded to the scene of the incident, but were unable to locate a suspect.

On 08/01/02 I conducted a follow up to 540 Boston Avenue at the Amoco gas station. At this location, I spoke to Saj, Khokhar DOB 01/01/49 who is the owner of the Amoco gas station. Saj stated among other things that he was not at the store when the store was robbed last night, but the clerk who was present during the robbery would be back to work at 2200 hours tonight. Saj provided this Detective with a recorded video tape of the robbery taken by closed circuit cameras in the store. This tape also recorded the audio conversation which took place between the suspect and the Amoco clerk who was robbed.

At approximately 2000 hours, I spoke with the clerk who was on duty at the time of the robbery. This person was identified as Salweem, Adnan DOB 03/09/80 of 285 Laffayette Street BPT CT. Salweem stated that he would come to the police department to look at photographs and give a written statement sometime during the evening on 08/01/02.

Investigation Continues

REPORT OF	REVIEWED BY
Dominic Joseph Abbate #81	Sgt J Sherbo
SIGNATURE	CASE STATUS
	PG 1 OF 1

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EXHIBIT D

Brid eport Police Departm t

CRIMINAL INVESTIGATION REPORT - DETECTIVE DIVISION

REPORT TYPE	CASE #	FILE #
Supplemental	02D-1556	020801-030

CODE	TYPE OF CRIME/INCIDENT	DATE OF CRIME/INCIDENT	TIME	DATE OF REPORT
0302	Robbery	08/01/02	2015:00	08/01/02

On 08/01/02, in reference to case # 02D1556, myself along with Detective Barona conducted a follow up investigation to St. Vincent's Hospital in Bridgeport. At St. Vincent's Hospital I used the video/photo imaging equipment owned by the Hospital to generate black and white still photographs of the potential suspect as seen on the surveillance video which was collected from the Amoco gas station on 08/01/02 by Detective DePietro.

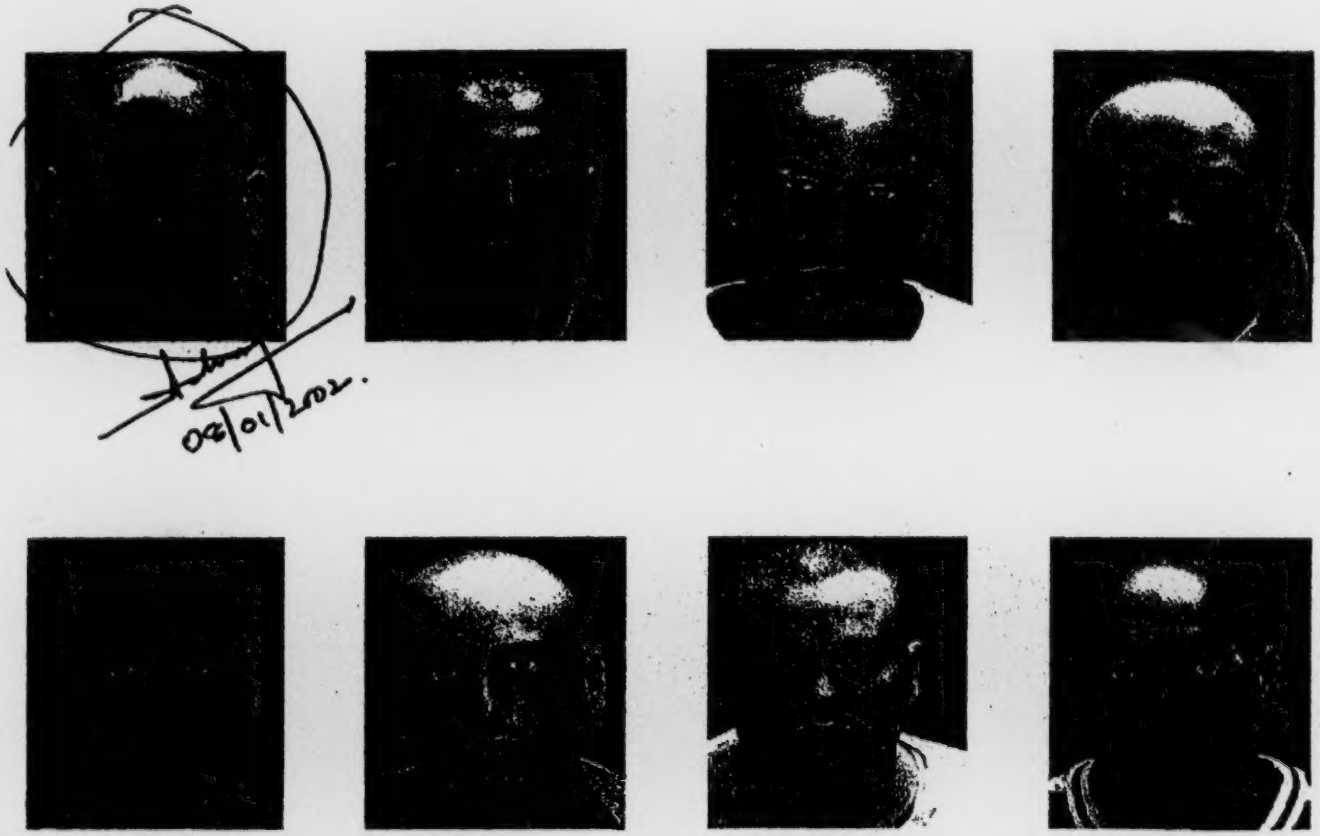
On 08/01/02, I obtained a signed sworn statement from Adnan Saleem D.O.B. 03/09/80 of 285 Lafayette Street BPT, CT. Saleem is the victim of the robbery which occurred at 540 Boston Avenue at the Amoco gas station on 08/01/02. In this statement, Saleem stated among other things that at approximately 0425 hours, a white male with a pink towel wrapped around his neck walked up to the outside cash register drawer. The white male stated that he had a gun and ordered Saleem to give him all of the twenty dollar bills or he would shoot Saleem. Saleem stated that he proceeded to give the white male 6-8 twenty dollar bills as the white male fled on foot towards Beecher Street. Saleem went on to describe the suspect as a white male in his late twenties or early thirties. The suspect wore a blue shirt, blue jeans and a pink towel around his neck. The suspect had a shaved head and did not speak with any accents. Saleem stated that he did not see a handgun, but he saw the outline of what appeared to be a handgun in the suspect's pocket.

I showed Saleem photo array number one consisting of eight males. Saleem immediately identified photograph number one as the person who robbed him. Photograph number one of photo array number one is Image identification number 2015015, originating in Bridgeport Police Department and is assigned to **Christopher Russo D.O.B. 10/24/74 of 1001 Main Street BPT, CT.**

Investigation Continues.

REPORT OF	REVIEWED BY
Detective Jeremy C DePietro	
SIGNATURE: Detective Jeremy C DePietro	CASE STATUS

Bridgeport Police Department



BRIDGEPORT POLICE DEPARTMENT

STATEMENT OF Adnan Saleem

EXHIBIT F

Q. Do you have an operating video camera in the Amoco station?
A. Yes, it works very well.

Q. I am going to show you photo array number one containing eight males. Look at the photos and tell me if you recognize anyone.

A. The first picture. He is the guy who robbed me with the gun at the Amoco station last night. I am positive. I am one hundred percent sure.

Q. After reading this statement and finding it to be true and correct, will you sign it?
A. Yes.

Q. Did you tell the truth?
A. Yes.

Q. How were you treated by this investigator?
A. Very good.

By affixing my signature to this statement, I acknowledge that I have read it and/or have had it read to me and it is true to the best of my knowledge and belief.

Witness Detective Jerry DeLuca Signature

Witness

Personally appeared the signer of the foregoing statement and made oath before me to the truth of the matters contained therein

Subscribed and sworn to before me on this 1st day of August 2002 under authority of the Connecticut General Statutes, 1-24 Sgt. J. Shanley

ARREST WARRANT APPLICATION
JD-CR-64 Rev. 7-95
C.G.S. § 54-2a
Pr. Bk. Sec. 583, 593A, 594

STATE OF CONNECTICUT
SUPERIOR COURT

EXHIBIT
NUMBER
G

NAME AND RESIDENCE (Town) OF ACCUSED	COURT TO B	
Russo Christopher 1001 Main Street Bridgeport Ct Dob: 10/24/74	Bridgeport	2

POLICE DEPARTMENT	CASE NO	AFFIANT
Bridgeport PD	02D1556	Det. Jeremy C. Depietro 19423

APPLICATION FOR ARREST WARRANT

TO: A Judge of the Superior Court

The undersigned hereby applies for a warrant for the arrest of the above-named accused on the basis of the facts set forth in the ...

[X] affidavit below... [ ] affidavit(s) attached.

DATE & SIGNATURE	DATE	SIGNED (Prosecutorial Official)
	9/6/02	

PAGE 1

AFFIDAVIT

The undersigned, being duly sworn, deposes and says:

1) The undersigned, Det. Jeremy C. DePietro, being duly sworn, does depose and state that he is a member of the Bridgeport Police Department and has been a member since February 24, 1997. At all times mentioned herein he was acting as a member of said department. The following facts and circumstances are stated from personal knowledge and observations as well as information received from other police officers acting in their official capacity and from official police reports and statements made by prudent and credible witnesses.

2) On 08/01/02, at approximately 0425 hours, Officer John Rosa of the Bridgeport Police Department responded to 540 Boston Avenue at the Amoco gas station on report of a Robbery. The victim, Adnan Saleem D.O.B. 03/09/80 of 285 Lafayette Street BPT, CT was working as a cashier on this night when a white male with a pink towel around his neck walked up to the cashier window and told Adnan Saleem to give me all of the twenties or I'll shoot you. Adnan Saleem gave the white male approximately 6-8 twenty dollar bills as the white male fled on foot toward Beecher street. Adnan Saleem stated that the incident was caught on a video surveillance camera maintained by the owner of the store. This video tape was retrieved by this affaint on 08/01/02.

3) On 8/1/02, this affiant obtained a signed sworn statement from Adnan Saleem in which he stated among other things that he was working on the night of 08/01/02. Adnan Saleem stated that a male walked up to the outside drawer by the register and stated to him that he had a gun in his pocket. The male stated "Give me all of the twenty dollars bills or I'm going to shoot you". Adnan Saleem gave the suspect 6 or 8 twenty dollar bills. The suspect then fled on foot towards Beecher street.

DATE & SIGNATURE	DATE Thu, Aug 08, 2002	SIGNED (Affiant) Det. Jeremy C. DePietro 19423
JURAT	SUBSCRIBED AND SWORN TO BEFORE ME ON (Date) Thu, Aug 8, 2002	SIGNED (Judge, Clerk, Comm. Sup. Notary Pub.)

FINDING

The foregoing Application for an arrest warrant, and affidavit(s) attached to said Application, having been submitted to and considered by the undersigned, the undersigned finds from said affidavit(s) that there is probable cause to believe that an offense has been committed and that the accused committed it and, therefore, that probable cause exists for the issuance of a warrant for the arrest of the above-named accused in accordance with C.G.S. 1-24.

DATE & SIGNATURE	DATE	SIGNED (A Judge of the Superior Court)
	9/9/02	

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ARREST WARRANT APPLICATION
JD-CR-64 Rev. 7-96
C.G.S. § 54-2a
Pr. Bk. Sec. 593, 593A, 594

STATE OF CONNECTICUT
SUPERIOR COURT

FOR COURT USE ONLY
Supporting Affidavits Sealed
☐ YES ☐ NO

NAME AND RESIDENCE (Town) OF ACCUSED	COURT TO BE HELD AT	G.A. NO.
Russo Christopher 1001 Main Street Bridgeport Ct Dob: 10/24/74	Bridgeport	2

POLICE DEPARTMENT	CASE NO	AFFIANT
Bridgeport PD	02D1556	Det. Jeremy C. Depietro 19423

APPLICATION FOR ARREST WARRANT

TO: A Judge of the Superior Court

The undersigned hereby applies for a warrant for the arrest of the above-named accused on the basis of the facts set forth in the ...

[X] affidavit below... [ ] affidavit(s) attached.

DATE & SIGNATURE	DATE	SIGNED (Prosecutorial Official)
	9/6/02	

PAGE 2 **AFFIDAVIT**

The undersigned, being duly sworn, deposes and says:

4) This affiant showed Adnan Saleem photo array number one consisting of eight males. Adnan Saleem identified photo number one as the male who robbed him at the Amoco gas station. When this affiant asked Adnan Saleem if he was sure about the identification, Adnan Saleem responded, "He is the guy who robbed me with the gun at the Amoco station last night. I am positive. I am one hundred percent sure." Photo number one, of photo array number one, is image identifiaction # 2015015 originating from Bridgeport Police Department photo data base and is assigned to **Christopher Russo D.O.B. 10/24/74 of 1001 Main Street BPT, CT.**

5) Based on the aforementioned information, this affiant believes that reasonable grounds and probable cause does exist for the issuance of an arrest warrant for **Christopher Russo D.O.B. 10/24/74 of 1001 Main Street Bridgeport CT.** charging him with: **53a-134 Robbery in the First degree.**

DATE & SIGNATURE	DATE	SIGNED (Affiant)
	Thu, Aug 8, 2002	Det. Jeremy C. DePietro 19423
JURAT	SUBSCRIBED AND SWORN TO BEFORE ME ON (Date) Thu, Aug 8, 2002	SIGNED (Judge, Clerk, Comm. Sup. Notary Pub.)

FINDING

The foregoing Application for an arrest warrant, and affidavit(s) attached to said Application, having been submitted to and considered by the undersigned, the undersigned finds from said affidavit(s) that there is probable cause to believe that an offense has been committed and that the accused committed it and, therefore, that probable cause exists for the issuance of a warrant for the arrest of the above-named accused in accordance with C.G.S. 1-24.

DATE & SIGNATURE	DATE	SIGNED (A Judge of the Superior Court)
	9/9/02	

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EXHIBIT B

DEPARTMENT OF POLICE
BRIDGEPORT, CT
INCIDENT RPT

UNFOUNDED ☐ ARREST ☐ INACTIVE ☐
OPEN ☐ CLOSED ☐ CLEARED ☐
WARRANT ADVISED ☐ APPROVED: ☐

REVIEW DATES

1. INCID NO	2. INVEST CASE NO	3. TYPE OF CRIME/INCIDENT	
020918-071	02D-1556	Warrant Service	4701

5. DISPATCHED M D Y T		T	7. TIME of OCCURRENCE	M D Y	TIME	8. DISPATCHED TO
6. ON SCENE M D Y T	09/18/02	T		09/18/02		

9. LOCATION of CRIME/INCIDENT	10. TYPE of PREMISE	11. SECTOR	12. REPT AREA
465 Chestnut Tree Hill Road, Oxford, Ct	one family dwelling		

13. NO of VICTIMS	14. VICTIM'S NAME (Last, First, Middle)	15. VICTIM'S COMPLETE ADDRESS	16. HOME PHONE
			17. BUSN/SCHOOL PHONE

18. AGE	19. DOB	20. RACE	21. SEX	22. SSN	23. PLACE of EMPLOYMENT/SCHOOL ATTENDING (Complete Address)

24. VIC INJURED Y/N	25. NATURE of INJURY	26. HOSPITAL	ADMITTED Y/N	27. ATTENDING PHYSICIAN

28. Indicate with proper codes in boxes provided persons relationship to investigation:
V2 = Victim #2 W1 = Witness #1 W2 = Witness #2 R = Reporting Person D = Discover PK = Person Knowledgeable PC = Person Canvassed
Indicate also if appropriate: NI = Not Interviewed X = Provided no viable info

29. NAME (Last, First)	30. DOB/AGE	31. ADDRESS/ADDRESS CHECKED	32. PHONE NO (Home & Business/School)

33. INDICATE WHO CAN IDENTIFY SUSPECT (R) REPORTING PERSON, (D) DISCOVERER, (V1) VICTIM #1 (W1) WITNESS #1, (PK) PERSON KNOWLEDGEABLE ETC.

34. SUSPECT #1 (Last, First MI - Include Any AKA Info)			SUSPECT #2 (Last, First, MI - Include Any AKA Info)			SUSPECT #1 (Last, First MI - Include Any AKA Info)		
Russo	Christopher J	R						

36. SUSPECT #1 May Be Located At	SUSPECT #2 May Be Located At	SUSPECT #3 May Be Located At
465 Chestnut Tree Hill Road, Oxford, Ct		

35. SUSPECT #1 Description	SUSPECT #2 Description	SUSPECT #3 Description
dob: 10/24/74		

37. Arrested (Y/N)	Y	Arrested (Y/N)		Arrested (Y/N)	

38. VEH STATUS S = Stolen R = Recov SP = Suspect T = Target	39. MAKE/MODEL	40. YEAR	41. TYPE	42. COLORS (Top/Bottom)	43. ID CHARACTERISTICS

44. Lic. Plate No & Reg. (State, Year)	45. VIN/BICYCLE SERIAL NO	46. ALARM/NCIC NO	47. LOSS VALUE	48. RCOV VALUE

49. TYPE of PRP TAKEN/DAMAGED	50. PRP DESC. & I.D. INFO

51. POINT of ILLEGAL ENTRY/MEANS of ATTACK	52. TYPE of INSTRUMENT/WEAPON (Describe)	53. LOSS TOTAL	54. RCOV TOTAL

55. Narrative. Summarize details of the crime, including progression of events, names of other officers or units assisting on scene.
For any additional information which is an extension of any of the above blocks. Indicate block number at left.

The undersigned detective is assigned to The Connecticut Violent Crime FBI Fugitive Task Force. The Bridgeport Police holds a warrant for the arrest of Christopher Russo. Members of The Task Force with Uniformed Ct. State Troopers assigned the Oxford area went to the above listed address. Contact was made with the suspect's brother, who came to the door, and stated Christopher was in his room. Christopher Russo was taken into custody without incident and transported to booking. He was charged with Robbery 1st Degree 53a-134. Bond was court set at

56. PHYSICAL EVIDENCE Y/N	57. PROPERTY RECEIPT NO	58. RELATED INCIDENT NO(S)	59. RELATED ARREST NO(S)	60. RELATED CASUALTY NO(S)
N				

61. REPORTING OFFICER(S) (CAD#, First, Last)	SECT	62. REQUIRED FOLLOW-UP/RECOMMENDATIONS
#516 DET ROBERT MARTIN	FTF	Pros.
		63. SUPERVISOR REVIEW (CAD#, First, Last) CONCUR Y/N ☐

PG 1 OF 2

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9/17/2002 6:45:50 PM BPD-1

DEPARTMENT OF POLICE
BRIDGEPORT, CT
SUPPLEMENTAL RPT

STATUS CHANGE

APPROVED

DP | I | II | III | IV | V | VI

REPORT TYPE: [X] Narrative Continuation [ ] Additional Information [ ] Investigative Progress [ ] Clear Up/Recovered Property

UCR

1. OFFENSE/INCIDENT: Warrant Service

3. LOCATION of CRIME/INCIDENT (House No & Street): 465 Chestnut Tree Hill Road, Oxford, Ct

4. VICTIM'S NAME (Last, First, Middle) (If Firm, Name):

5. DATE OF OCCURRENCE: Wed, Sep 18, 2002

7. INCIDENT NO: 020918-071

6. VICTIM'S ADDRESS:

8. INVEST CASE NO: 02D-1556

DETAILS

100,000.00 with a court date of 09/19/02.

9. REPORTING OFFICER (CAD#, Rank, First, Last): DET ROBERT MARTIN #514

11. SUPERVISOR'S REVIEW (CAD#, First, Last):

10. DATE REPORT PREPARED: Tue, 17 Sep, 2002

PG 2 OF 2

[ ] CONCUR [ ] RECOMMEND

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[EXHIBIT I]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIV. NO. 3:03CV1792 (AWT)

CHRISTOPHER RUSSO

Plaintiff,

VS.

CITY OF BRIDGEPORT, *et al*

Defendants

NOVEMBER 19, 2004

AFFIDAVIT

I, John Donovan, being duly sworn, hereby depose and say:

1. I am over the age of 18 and believe in the obligation of an oath.

2. I am making this affidavit of my own personal knowledge.

3. I am presently employed by the State of Connecticut as an Inspector for the Office of the State Attorney. I have been an Inspector since January, 1998.

4. I am assigned to the Criminal Court, Part A, for the Judicial District of Fairfield at Bridgeport.

5. In my capacity as an Inspector I assist in preparing the files for criminal actions for trial in the Superior Court, reviewing and assembling exhibits, talking to witnesses, and gathering additional information requested by any of the State Attorneys assigned to the particular criminal action.

6. On October 11, 2002, the criminal action of *State of Connecticut v. Christopher Russo* was transferred from Part B at Golden Hill Street Court to Part A, Criminal Division at 1061 Main Street.

7. I received the complete file sometime after October 11, 2002 to assist Attorney Howard Stein of the State Attorney's Office in preparing the file for trial.

8. As a normal course of my duties, I reviewed all statements and the warrant application for the arrest. In the course of my review I noted that the warrant application referred to a videotape as evidence. On November 19, 2002 I went to the Bridgeport Police Department at 300 Congress Street to gather the evidence of the videotape that was noted in the arrest warrant application.

9. On November 19, 2002 I spoke with an officer in the property room at the Bridgeport Police Department. This officer could not locate the videotape.

10. On November 19, 2002 I tried to speak to Detective Jeremy Depietro to determine if he knew the location of the tape. I learned that Detective Depietro was in training until November 25, 2002.

11. Sometime after November 25, 2002 I went back to the Bridgeport Police Department and spoke to Detective Depietro about the videotape. Detective Depietro had the videotape in his locked desk drawer and gave it to me.

12. Sometime after I received the tape I reviewed it and noted that the tape was what I describe as four-quadrant time lapse photography. I could not see any fluid movement and had difficulty seeing the individual who robbed the store on August 1, 2002. I could not see the image of the person clearly unless I had it enhanced. I determined this would be necessary.

13. Some time later I was given a letter dated December 2, 2002 from Attorney Mirsky requesting, for the first time, to view the tape prior to a pretrial that was scheduled for December 12, 2002.

14. Because of the difficulty in viewing the suspect, I took the tape to the State Forensic Lab to have it enhanced for viewing on January 3, 2003.

15. On January 22, 2003, the tape was returned to the Office of the State Attorney in Bridgeport.

16. At some time after the tape was returned, enhanced, Attorney Mirsky and one of his associates came to view the tape.

17. Sometime after January 22, 2003, when Mirsky viewed the enhanced tape, he indicated to me, for the first time, that the person on the tape was not his client, Russo.

18. Attorney Mirsky and I had differing opinions as to whether the person noted in the videotape was the perpetrator of the robbery. I could not, as an investigator, state that the individual in the videotape was not Mr. Russo.

19. On April 9, 2003, as a follow-up to Attorney Mirsky's claims, I sent a letter to the Bridgeport Correctional Center requesting that they take photographs of Mr. Russo's tattoos.

20. On April 21, 2003 I sent a second letter to the Bridgeport Correctional Center for photographs because they had not done this as a result of the April 9, 2003 request.

21. After I received the photographs, I gave both the videotape and the photographs to Attorney Jonathan Benedict to review.

22. I did not have any discussion with Detective Depietro after he provided me with the videotape he utilized for the arrest warrant. I did not ask for any further information from Detective Depietro.

23. I did not take part in any further work for the criminal action involving Mr. Russo after April 22, 2003.

/s/ John Donovan
John Donovan

Sworn and subscribed before me this 19th day of November, 2004

/s/ Barbara Brazzel-Massaro
Barbara Brazzel-Massaro
Commissioner of the Superior Court

[EXHIBIT J]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIV. NO. 3:03CV1792 (AWT)

CHRISTOPHER RUSSO

Plaintiff,

VS.

CITY OF BRIDGEPORT, *et al*

Defendants

JUNE 15, 2004

REQUEST FOR ADMISSION

The Defendants, pursuant to Rule 36, F.R. Civ. P., request that the Plaintiff, Christopher Russo, admit to:

1. The Plaintiff requested of the State Attorney to view the tape and was told "let the jury decide."

Denied.

2. Bail was set by a judge of the Superior Court for the Plaintiff based on the August 1, 2002 event.

The plaintiff lacks sufficient information in order to form a belief and therefore can neither admit or deny.

3. None of the police officers named as Defendants set bail for the Plaintiff.

The plaintiff lacks sufficient information in order to form a belief and therefore can neither admit or deny.

4. The Superior Court had a probable cause finding.

The plaintiff lacks sufficient information in order to form a belief and therefore can neither admit or deny.

5. Prior to September 18, 2002, Christopher Russo had never met Police Office Chris Borona.

Admit.

6. Prior to September 18, 2002, Christopher Russo had never met Detective Jeremy Depietro.

Admit.

7. Prior to September 18, 2002, Christopher Russo had never met Sergeant Joseph Sherbo.

Admit.

8. Prior to September 18, 2002, Christopher Russo had never met Police Officer John Rosa.

Admit.

9. After the arrest of Christopher Russo on September 18, 2002, he did not speak to Detective Depietro.

Admit.

10. After the arrest of Christopher Russo on September 18, 2002, he did not speak to Police Officer Chris Borona.

Admit.

11. After the arrest of Christopher Russo on September 18, 2002, he did not speak to Serbeant Sherbo.

Admit.

12. After the arrest of Christopher Russo on September 18, 2002, he did not speak to Police Officer Rosa.

Admit.

13. The Public Defender who represented Christopher Russo never requested to see the video of the robbery on August 1, 2002.

Denied.

14. Mr. Russo never asked the Public Defender to see the video from the robbery on August 1, 2002.

Denied.

15. On September 18, 2002, Christopher Russo refused to talk to Detective Depietro about the robbery of August 1, 2002.

Denied.

16. Plaintiff was arrested by Detective Martin.

The plaintiff lacks sufficient information in order to form a belief and therefore can neither admit or deny.

THE DEFENDANTS

BY: /s/ Barbara Brazzel-Massaro
Barbara Brazzel-Massaro
Associate City Attorney
Office Of The City Attorney
999 Broad Street
Bridgeport, CT 06604
Tel. No. 576-7647
Juris No. 06192

[EXHIBIT K]

SUPERIOR COURT GA-2 OF FAIRFIELD
AT BRIDGEPORT

No. CR-020182908

STATE OF CONNECTICUT
Complainant

vs.

CHRISTOPHER RUSSO
Defendant

SEPT. 19, 2002

BEFORE: THE HONORABLE DAVID GOLD

APPEARANCES:

CHARLES STANGO
Assistant State's Attorneys

ATTORNEY LINDA DENHOLTZ,
(Arraignment Public Defender)

For the Defendant

---

[1] MR. STANGO: Christopher Russo, arraignment number 25. It's a warrant arrest.

MS. DENHOLTZ: He's eligible, Your Honor.

THE COURT: Was bond set on the warrant, do you know?

THE BAIL COMMISSIONER: One hundred thousand.

THE COURT: What kind of record does Mr. Russo have?

THE BAIL COMMISSIONER: He has two cases pending in GA-4, Naugatuck, Your Honor for 9-25. He is out on bond. One is for sale, drug paraphernalia, and the other one is a motor vehicle. He just finished an assault two probation. He has a record for unlawful restraint, violation of probation, an assault. I would ask that the bond remain.

THE COURT: Does the State want to be heard?

MR. STANGO: With that history along with the cases pending and the allegations that support the warrant, I would look for $250,000.

THE COURT: Ms. Denholtz?

MS. DENHOLTZ: I don't see anything of failures to appear, Your Honor. I'd ask for a $50,000 bond.

THE COURT: I'll leave the bond as set by the Judge that signed the warrant. The bond is set in the amount of $100,000. Is PD appointed?

MS. DENHOLTZ: Yes, Your Honor.

THE COURT: Okay, PD is appointed and the matter [2] is continued until October 3rd. Thank you, Mr. Russo.

* * * *

[EXHIBIT L]

SUPERIOR COURT JUDICIAL DISTRICT OF FAIRFIELD
AT BRIDGEPORT

No. CR020182908

STATE OF CONNECTICUT

vs.

CHRISTOPHER RUSSO

APRIL 23, 2003

BEFORE HONORABLE RICHARD A. DAMIANI, JUDGE

APPEARANCES:

For the State:

JONATHAN BENEDICT, ESQ.
State's Attorney

For the Defendant:

JOSEPH MIRSKY, ESQ.

---

[1] THE COURT: Mr. Russo is here, Mr. Mirsky is here, Mr. Benedict is here.

MR. BENEDICT: Realizing that often the less said is better, I'm going to put on the record the facts that require the State to enter a nolle as in this case. The crime happened in the beginning of August of last year. And, it was a robbery of a convenience store at what the perpetrator reported to be gunpoint, although one was not actually displayed.

The victim, the worker in the convenience store, gave a description of the robber to police immediately. Over the next weeks investigation was conducted, which included a review of a videotape taken of the robbery that included, of course, a series of photographs or views of the perpetrator.

After that was done, an investigating officer had the opinion that he had come across that person before, that person being Mr. Russo. Mr. Russo's mug shot was placed in a eight photo array with seven other young white shaven-headed males. And from that, the victim selected Mr. Russo's photograph positively as the person who had robbed him approximately a month later.

After the case was transferred here, it was brought to our attention that Mr. Russo had fairly vivid tattoos on his arms as well on his neck. Part of the reason for the identification of Mr. Russo or [2] the arrest of Mr. Russo in this particular case is because the perpetrator in the photographs taken at the store had the portions of his neck, his entire neck completely covered by a towel which would have been fairly easily considered to be an effort to cover up the vivid tattoos that he carries on both sides of his neck.

We, thereafter, having heard about the tattoos on the arms, had still photographs developed from the videotape, and from the still photographs, 1 believe myself amongst other persons who have seen Mr. Russo in the courtroom all were reasonably convinced, if not completely convinced that Mr. Russo was, in fact, the person who appears in the still photos of the videotape taken at the convenience store.

And more importantly than that is from those still photos, you could not see what were claimed to be bare forearms, therefore, you could not see from the still photos any tattoos whatsoever, you couldn't even tell whether it was a long sleeve shirt or a short sleeve shirt.

However, in continuing our investigation, we had Corrections take photographs of Mr. Russo's leg and arm tattoos, and they were delivered by Corrections to our office two days ago. We pre-tried the case yesterday, the insistence that it couldn't—was not Mr. Russo continued from his counsel.

[3] So, I had a talk—to sit down with a couple of investigators yesterday to actually view the videotape in the thought that perhaps the videotape gave somehow somewhat of a better view of the perpetrator than the stills that had been developed from the videotape. That, in fact, happened.

The videotape shows both sides of the perpetrator's left arm and one side of the forearm, and one side of the perpetrator's right forearm. And there very clearly are no tattoos on any of those.

Mr. Russo was arrested, I believe, somewhere between five and six weeks following the event. The only opportunity a person who had no tattoos at the time of the crime to acquire all those tattoos between then and now would have been presumably while he was still out on the street, certainly not after he had become incarcerated.

Just to double check on whether or not that could have been, we checked with Carla Scinto, Mr. Russo's former probation officer. And, I spoke to her yesterday, and she informed me that as of the time that Mr. Russo got off of probation with her, she's in the Milford office, approximately one year before the crime, he, at that time, had on all his—both his forearms very vivid tattoos which indicate that Mr. Russo's always had those tattoos. And, very clearly the perpetrator of this crime has no tattoos on his [4] arms.

So, as a result, the State would move the Court dismiss this matter.

THE COURT: Anything further, Mr. Mirsky?

MR. MIRSKY: No, your Honor.

THE COURT: You did your job. The matter is dismissed. Good luck, Mr. Russo.

MR. RUSSO: Thank you very much.

THE COURT: Okay.

MR. MIRSKY: See ya, Chris. Thank you, your Honor. Thank you, Mr. Benedict, I respect you, I always did.

(The matter was concluded for the day)

[EXHIBIT M]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIV. NO. 3:03CV1792 (AWT)

CHRISTOPHER RUSSO

Plaintiff,

VS.

CITY OF BRIDGEPORT, *et al*

Defendants.

NOVEMBER 19, 2004

AFFIDAVIT

I, Christopher Borona, being duly sworn, hereby depose and say:

1. I am over the age of 18 and believe in the obligation of an oath.

2. I am making this affidavit of my own personal knowledge.

3. I am employed by the Bridgeport Police Department as a Detective. I have been employed since June 28, 1998 with the Bridgeport Police Department.

4. In August, 2002 I was assigned to the Detective Bureau within the Bridgeport Police Department.

5. On August 1, 2002, I accompanied Detective DePietro to the Amoco Station and Store on Boston Avenue to gather information and investigate a robbery that had taken place earlier that day.

6. During the course of the investigation Detective DePietro was given a surveillance videotape that had been

operating at the business in the early morning hours of August 1, 2002.

7. After a period of time, I returned to the Bridgeport Police Department.

8. The tape that I saw at the Police Department looked as if it was divided into four (4) sections, with each quarter depicting a different part of the store. The tape showed the events in fast action and appeared to have static so that the pictures were not clear. I could not hear anything from the video. Because of the poor quality, the fast speed of the tape and the inability to clearly see to get features for an identification, I went with Detective DePietro to St. Vincent's Hospital to utilize a photo printing machine they allowed the Bridgeport police to utilize.

9. As a result of the viewing at St. Vincent's, I was able to define various facial characteristics and used these to serve as a guide for the adult suspect database to obtain any police photos that fit within the description.

10. As I recall, I submitted a description of white male, balding, and facial hair. As a result of the search, a photo lineup array was generated by the computer.

11. The photo array was to be utilized when the victim came to the Police Department to give a statement.

12. I did not take part in the arrest of Christopher Russo.

13. I had never met or had contact with Mr. Russo prior to the robbery on August 1, 2004, nor did I meet him during his arrest or incarceration on September 18, 2002 or thereafter.

/s/ Christopher Borona
Christopher Borona

Sworn and subscribed before me
this 19th day of November, 2004

/s/ Barbara Brazzel-Massaro
Commissioner of the Superior Court

[EXHIBIT N]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIV. NO. 3:03CV1792 (AWT)

CHRISTOPHER RUSSO

Plaintiff,

vs.

City of Bridgeport, *et al*

Defendants

NOVEMBER 19, 2004

AFFIDAVIT

I, Jeremy DePietro, being duly sworn, hereby depose and say:

1. I am over the age of 18 and believe in the obligation of an oath.

2. I am making this affidavit of my own personal knowledge.

3. I am employed by the Bridgeport Police Department as a Detective. I have been employed since June 28, 1998 with the Bridgeport Police Department.

4. In August, 2002 I was assigned to the Detective Bureau within the Bridgeport Police Department.

5. During the course of my investigation into the robbery at 540 Boston Avenue, I received a surveillance videotape from the owner of the convenience store which contained the activities at the store during the time period of the robbery.

6. I viewed the videotape at the Bridgeport Police Department. The surveillance video was of different and lesser quality than a home video. It was arranged with four separate views, each showing a different location within the store. One area was the cashier area where the robbery occurred. The movement was faster than normal time with what appeared to be lapses in time. Therefore, the video did not depict smooth movement and all of the activities or views of the individuals. Because of the quality and movement of the tape, it was difficult to get a clear and clean view of the subject.

7. Because of the difficulty in viewing the video, I decided to take the video to St. Vincent's Hospital to utilize a video-photo machine to freeze the picture and get a photo of the suspect. This photo was not clear, but provided me with facial characteristics that I could utilize to continue the investigation and possibly get a photo array.

8. I have attached the photos I took at St. Vincent's to this affidavit as Exhibit "O."

9. The information I got from the printed photo was utilized to create a photo array with the Bridgeport Police Department photo identification database.

10. The computer set up the photo array with the photos appearing randomly. I did not choose the order of the photos.

11. Prior to August 1, 2002, I had never had any contact with Mr. Russo or any of the individuals who appeared in the photo array. I did not know the names of the individuals in the array and only after Mr. Saleem picked the photo did I get a name and address.

12. I was not the officer who arrested Mr. Russo on September 18, 2002.

13. I briefly saw Mr. Russo on September 18, 2002 when he was in the Bridgeport Police Department but I did not have any discussions with him because he would not discuss the August 1, 2002 robbery with me.

14. At the time of his arrest, tattoos were not an issue to me and I did not look for tattoos on Mr. Russo nor did he discuss them.

15. I have not spoken to or seen Mr. Russo since September 18, 2002 except for the settlement hearing in this court.

16. I did not receive any call to testify or appear for a criminal trial of Mr. Russo after September 18, 2002.

/s/ Jeremy DePietro
Jeremy DePietro

Sworn and subscribed before me
this 19th day of November, 2004

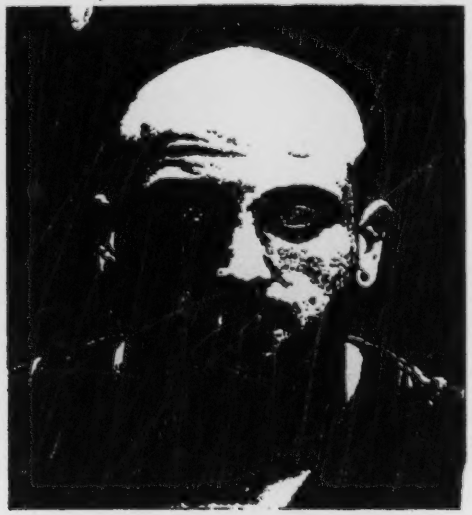
/s/ Barbara Brazzel-Massaro
Barbara Brazzel-Massaro
Commissioner of the Superior Court

BEST AVAILABLE COPY

EXHIBIT

tabbies

P



APPENDIX H

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

No. 3:03CV1792 (AWT)

CHRISTOPHER RUSSO
Plaintiff(s),

v

CITY OF BRIDGEPORT, *et al.*
Defendant(s).

DEPOSITION OF CHRISTOPHER RUSSO

Pretrial deposition taken in the above-entitled action on behalf of the defendant(s), before Dawn C. Cuff, Lic. No. 00142, a Notary Public, pursuant to the Practice Book Civil Rules of Procedure, at the Office of the City Attorney, 999 Broad Street, Bridgeport, Connecticut.

[72] Q Do you remember who the prosecutor was there?
A I don't remember.
Q Was that in open court?
A Yes.
Q Do you remember what month that was?
A When that one happened?
Q Yes.
A No, I don't.
Q At any time after you first spoke with Defective DePietro at the Bridgeport Police Department up until today, have you ever talked to him?
A Talked to who?
Q Officer DePietro.
A No.

Q Have you ever seen him at any time after that first time in the police department?

A No.

Q Did you ever see Officer DePietro before you met him in the Bridgeport Police Department on September 18, 2002?

A No.

Q You've also named Sergeant Sherbo. Do you [73] know Sergeant Sherbo of the Bridgeport Police Department?

A No, I don't.

Q Have you ever met him?

A As far as I know, no.

Q You also named an Officer John Rosa. Do you know who Officer Rosa is?

A I didn't name him.

Q It's in your Complaint. Do you know who Officer Rosa is?

A No, I don't.

Q To the best of your knowledge, have you ever met Officer John Rosa?

A No.

Q And Officer Barona. Do you know an Officer Barona?

A I don't know if he was the guy that was in there with DePietro or not.

Q You say you don't know. Do you think that he may be the police officer who was in—

A I would know him by face if I seen him.

Q Other than by face, you don't recognize the name of Barona as an officer that you had any contact with in the Bridgeport Police Department?

APPENDIX I

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIV. NO.: 3: 03 CV 1972 (AWT)

CHRISTOPHER RUSSO

Plaintiff

vs.

CITY OF BRIDGEPORT, *et al*

Defendants

DECEMBER 14, 2004

EXHIBITS IN SUPPORT OF PLAINTIFF'S MEMORANDUM OF LAW OPPOSING SUMMARY JUDGMENT AND PLAINTIFF'S LOCAL RULE 56(02) STATEMENT

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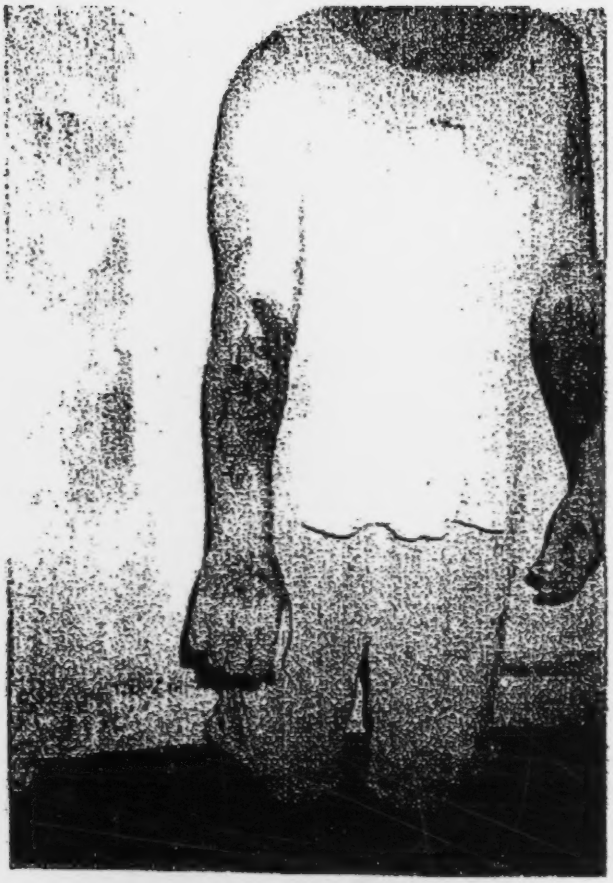
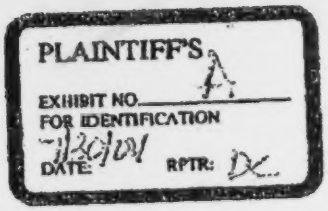
1. 2 Photographs taken on 09/18/02.
2. 03/29/01 Arrest Report.
3. Black and White Mug Shot of Chris Russo dated 03/30/01.
4. Incident Report No. 0201556.
5. Arrest Report 200209163.
6. Department of Corrections Report.
7. Surveillance Camera Stills.
8. Interrogatory Response of DePietro.

9. Deposition Transcript of Jeremy De Pietro.
10. Interrogatory Response of DePietro.
11. Interrogatory Response of DePietro.
12. Deposition Transcript of Jeremy DePietro.
13. Interrogatory Response of Borona.
14. Interrogatory Response of Rosa.
15. Amended to Disclosure by DePietro dated June 09, 2004.
16. Deposition of Jeremy DePietro.
17. Bridgeport Police Department Regulations.
18. City of Bridgeport Policy and Procedures.
19. Notice of Non-Employment of Sherbo.
20. Deposition Transcript of Chris Russo.
21. Affidavit of Chris Russo.
22. Six photographs of Chris Russo's tattoos.
23. Hearing Transcript of dismissal dated April 23, 2004.
24. Calovine vs. City of Bridgeport Case.
25. Murvin vs. Town of Stratford Case.

THE PLAINTIFF
Christopher Rust o

BY: /s/ Jeffrey D. Ginzberg for
Jeffrey D. Ginzberg
Perelmutter, Potash & Ginzberg
11 Bank Street
Seymour, Connecticut 06483
CT Federal Bar No: 12476
Telephone: (203) 888-2501
Fax: (203) 888-7928





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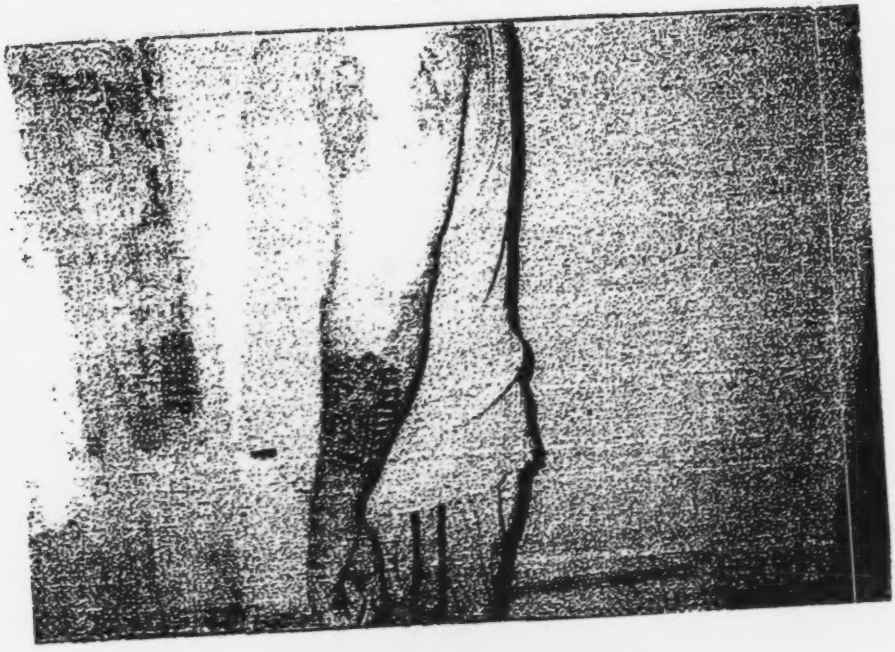
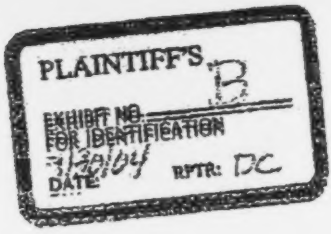
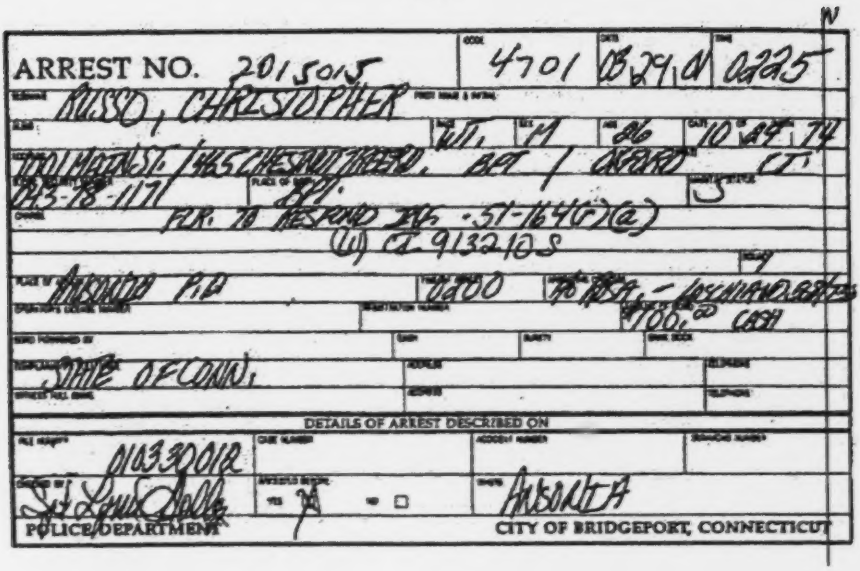



PLAINTIFF'S
B
EXHIBIT NO.
FOR IDENTIFICATION
3/30/04
DATE:
RPTR: DC



ARREST NO. 2015015 | 4701 | 08/29/01 | 0225

RUSSO, CHRISTOPHER

100 HAWK ST / 465 CHESTNUT MEAD. APT / DERBY CT

043-78-1171

FOR TO APPEAR SEC. 51-164G(a)

(4) CR-913210S

ANSONIA P.D. | 0200 | $100.00 CASH

STATE OF CONN.

DETAILS OF ARREST DESCRIBED ON

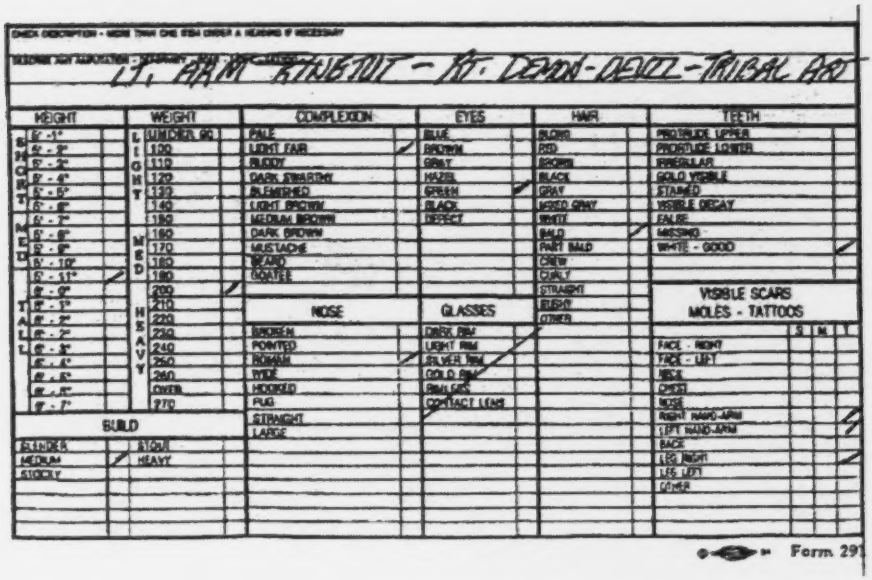
01033012

Sgt Lou Dolle

ANSONIA

POLICE DEPARTMENT

CITY OF BRIDGEPORT, CONNECTICUT



LT. ARM RINGOUT - RT. DEPOT-DEPOT-TRIBAL HAT

HEIGHT	WEIGHT	COMPLEXION	EYES	HAIR	TEETH
5'-1"	UNDER 90	PALE	BLUE	BLOND	PROGNATIC UPPER
5'-2"	100	LIGHT FAIR	BROWN	RED	PROGNATIC LOWER
5'-3"	110	RUDDY	GRAY	BROWN	IRREGULAR
5'-4"	120	DARK SWARTHY	HAZEL	BLACK	GOLD VISIBLE
5'-5"	130	BLEMISHED	GREEN	GRAY	STAINED
5'-6"	140	LIGHT BROWN	BLACK	MIXED GRAY	VISIBLE DECAY
5'-7"	150	MEDIUM BROWN	DEFECT	WHITE	FALSE
5'-8"	160	DARK BROWN		BALD	MISSING
5'-9"	170	MUSTACHE		PART BALD	WHITE - GOOD
5'-10"	180	BEARD		CREW	
5'-11"	190	GOATEE		CURLY	
6'-0"	200			STRAIGHT	
6'-1"	210			BUSHY	
6'-2"	220			OTHER	
6'-3"	230				
6'-4"	240				
6'-5"	250				
6'-6"	260				
6'-7"	OVER 270				

NOSE	GLASSES
BROKEN	DARK RIM
POINTED	LIGHT RIM
ROMAN	SILVER RIM
WIDE	GOLD RIM
HOOKED	RIMLESS
PUG	CONTACT LENS
STRAIGHT	
LARGE	

BUILD	
SLENDER	STOUT
MEDIUM	HEAVY
STOCKY	

VISIBLE SCARS MOLES - TATTOOS

	S	M	T
FACE - RIGHT			
FACE - LEFT			
NECK			
CHEST			
NOSE			
RIGHT HAND-ARM			
LEFT HAND-ARM			
BACK			
LEG RIGHT			
LEG LEFT			
OTHER			

Form 291

First:	CHRISTOPHER
Last:	RUSSO
MI:	
DOB:	10 / 24 / 74
Sex:	MALE
Race:	WHITE
Arrest#:	2015015
Photo Date:	03 / 30 / 2001
Hair Color:	BALD
Eye Color:	GREEN

EXHIBIT
Exhibit C

Bridgeport Police Departme

CRIMINAL INVESTIGATION REPORT - DETECTIVE DIVISION

REPORT TYPE	CASE #	FILE #
Narrative	02D1556	020801-030

CODE	TYPE OF CRIME/INCIDENT	DATE OF CRIME/INCIDENT	TIME	DATE OF REPORT
0302	Robbery	08/01/02	423:00	08/01/02

On 08/01/02, I was assigned by Sergeant Sherbo to investigate a report of a robbery at 540 Boston Avenue. This incindent took place on 08/01/02 at approximately 0423 hours. Patrol Officers responded to the scene of the incident, but were unable to locate a suspect.

On 08/01/02 I conducted a follow up to 540 Boston Avenue at the Amoco gas station. At this location, I spoke to Saj, Khokhar DOB 01/01/49 who is the owner of the Amoco gas station. Saj stated among other things that he was not at the store when the store was robbed last night, but the clerk who was present during the robbery would be back to work at 2200 hours tonight. Saj provided this Detective with a recorded video tape of the robbery taken by closed circuit cameras in the store. This tape also recorded the audio conversation which took place between the suspect and the Amoco clerk who was robbed.

At approximately 2000 hours, I spoke with the clerk who was on duty at the time of the robbery. This person was identified as Salweem, Adnan DOB 03/09/80 of 285 Laffayette Street BPT CT. Salweem stated that he would come to the police department to look at photographs and give a written statement sometime during the evening on 08/01/02.

Investigation Continues

REPORT OF	REVIEWED BY	
Detective Jeremy DeLeon #51	Sgt J Sherbo	
SIGNATURE	CASE STATUS	PG 1 OF 1

138a

DEPARTMENT OF POLICE
BRIDGEPORT, CONNECTICUT

INCIDENT REPORT

☐ UNFOUNDED ☐ ARREST ☐ INACTIVE
☐ OPEN ☐ CLOSED ____ ☐ CLEARED ____
☐ WARRANT ADVISED APPROVED:

REVIEW DATES | DP | I | II | III | IV | UCR | V | VI

139a

1. INCIDENT NUMBER	2. INVESTIGATIVE CASE NO.	3. TYPE OF CRIME / INCIDENT	4. CODE(S)
2-08-01-030	0201556	Robbery	0302

DISPATCHED	M:8 D:1 YR:23	7. TIME OF OCCURENCE	M:8 D:1 YR:23	8. DISPATCHED TO:	540 BOSTON AVE
ON SCENE	M:8 D:1 YR:23				

9. LOCATION OF CRIME / INCIDENT	10. TYPE OF PREMISES	11. SECTOR	12. REPT AREA
540 BOSTON AVE	AUTO Service Center	Green	31

NO. OF VICT	14. VICTIM'S NAME (LAST, FIRST, MIDDLE)	15. VICTIM'S COMPLETE ADDRESS	16. HOME TELEPHONE	17. BUSINESS/SCHOOL TELEPHONE
1	SALWEEM, ADNAN	28 S. LAFAYETTE ST BRIDGEPORT, CT.	( )336-2388	( )

18. Age	19. Date of Birth	20. Race	21. Sex	22. SSN	23. Place of Employment/School Attending (Complete Address)
22	3/9/80	I	M	—	

Victim Injured ☐ Yes ☑ No	25. Nature of Injury(s)	26. Hospital	Admitted? ☐ Yes ☐ No	27. Attending Physician

28. Indicate with proper codes on boxes provided persons relationship to investigation - (V2) Victim #2 (W1) Witness #1, (W2) Witness #2, (R) Reporting Person, (D) Discover, (PK) Person Knowledgeable, (PC) Person Canvassed (Indicate also if appropriate) (NI) Not Interviewed, or (X) Provided no viable Information.

29. Individual's Name	30. DOB / Age	31. Address / Address Checked	32. Telephone Numbers	
			(H)	(BS)
			(H)	(BS)
			(H)	(BS)
			(H)	(BS)
			(H)	(BS)

33. Indicate Who Can Identify Suspect (R) Reporting Person, (D) Discoverer, (V1) Victim #1, (W1) Witness #1, (PK)Person Knowledgeable Etc.

34. Suspect #1 (Name - Include Any AKA Info)	Suspect #2 (Name - Include Any AKA Info)	Suspect #3 (Name - Include Any AKA Info)
35. Suspect #1 May Be Located At	Suspect #2 May Be Located At	Suspect #3 May Be Located At
36. Suspect #1 Description: WHITE male 5'6 to 5'8 (med build) eyes short hair (crew) Blond hair BLUE T shirt JEANS (Pine Tree) ATC 30's	Suspect #2 Description	Suspect #3 Description
37. Arrested ☐ Yes ☑ No	Arrested ☐ Yes ☐ No	Arrested ☐ Yes ☐ No

38. Vehicle Status ☐ Stolen ☐ Recovered ☐ Suspect ☐ Target	39. Make/Model	40. Year	41. Type	42. Colors (Top/Bottom)	43. Identifying Characteristics

44. License Plate No. / Registration	State	Year	Type	45. Property Description & Identifying Information	46. Alarm/NCIC No.	47. Loss Value	48. Recvd. Val.

49. Type of Property Taken/Damaged	50. Property Description & Identifying Information			
Currency	6-8 20 Dollers Bills		—	

51. Point of Illegal Entry/Means of Attack	52. Type of Instrument/Weapon (Describe)	53. Loss Total	54. Recvd. Tot.
	UNKNOWN		

55. Narrative. Summerize Details of Crime, Including Progression of Events, Names of Other Officers or Units Assisting on Scene. For any additional information which is an Extension of any of the above blocks, Indicate Block Number at left.

Block #

Upon Arrival, ADNAN Salweem, Employee of the Amoco Station stated being Robbed by A WHITE male. AT APPROX. 04:10 hours the Suspect approached the window asking for A Bottle of Soda of An Unknown brand, (Presumably to get MR. Salween to open the door And let him in. The Suspect Then left And came back 2-3 minutes later And put his hand in the Cash drawer holding it open stating "give me All your Twenties or ill shoot you!" MR. SALWEEM

56. Physical Evidence	57. Property Receipt No.	58. Related Incident Nos.	59. Related Arrest Nos.	60. Related Casualty Nos.

61. Reporting Officer(s)	CAD #	Sect.	62. Required Follow-up/Recommendations	Page
PO John Rosa	508332	D.B.		1 of 1

63. Supervisor Review 4/4 Concur ☑ Yes ☐ No

DEPARTMENT OF POLICE
BRIDGEPORT, CONNECTICUT

SUPPLEMENTAL REPORT

STATUS CHANGE _____

APPROVED _____

D.P. | I | II
UCR | III | IV
 | V | VI

1. REPORT TYPE: (√) NARRATIVE CONTINUATION ( ) ADDITIONAL INFORMATION ( ) INVESTIGATIVE PROGRESS ( ) CLEAR UP/RECOVERED PROPERTY

2. OFFENSE / INCIDENT: Robbery

3. LOCATION OF OFFENSE (House No. and Street): 540 BOSTON AVE.

4. VICTIMS NAME (Last, First, Middle) (If Firm, Name): SALWEEN, ADNAN

5. DATE OF OCCURRENCE: AUGUST 1, 2002

6. VICTIM'S ADDRESS:

7. INCIDENT NO.: 02-08-01-030

8. INVESTIGATIVE CASE NO.:

BLOCK #

Then handed the Suspect 6-8 $20. Dollars bills after seeing A Large Bulge in his pocket believing it was A handgun. The Suspect then fled Down the Area of Beecher Street. P/O And other Units Canvassed The Area And A description was given to All Units. MR. SALWEEN Stated That he would be Able to I.D. The Suspect Again And There is A Videotape Available. P/O Told MR. SALWEEN to Advise his Supervisor To make The Tape Available for Bridgeport Detectives

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z AA BB

9. REPORTING OFFICER: P/O John Rosa | CAD. NO.: 568 | 10. DATE REPORT PREPARED: AUGUST 1, 2002 | PAGE 2 OF 2

11. SUPERVISOR'S REVIEW | CAD. NO.: 414 | (√) CONCUR | RECOMMEND _____

ARREST NO. 20020 9163 | CODE 4701 | DATE 09/18/02 | TIME 0620

NAME Russo Christopher J | RACE W | SEX M | AGE 37 | DATE OF BIRTH 10/24/64

ADDRESS 465 CHESTNUT HILL ROAD CITY OXFORD STATE CT

SOCIAL SECURITY NUMBER 043-78-1121 | PLACE OF BIRTH DPT CT | MARITAL STATUS Single

CHARGE ROBBERY 1ST DEGREE 53a-134 (a)(2) (Misdemeanor)

PLACE OF ARREST OXFORD (w) 02D-1556 | TIME OF ARREST 0620 | ARRESTING OFFICER DET K. MARTIN | SECTION F/T | BADGE # 512

DISPOSITION | BAIL BOND AMOUNT 100,000. CD C/S

DETAILS OF ARREST DESCRIBED ON

FILE NUMBER 020918-071 | CASE NUMBER 02D-1556 | ACCIDENT NUMBER | WARRANT NUMBER

ARRESTED BY | ARRESTED BEFORE ☒ ☐ | WHERE DPT, Naugatuck, Ansonia

POLICE DEPARTMENT — CITY OF BRIDGEPORT, CONNECTICUT

+1 - 5T + 25T

DESCRIPTION - MORE THAN ONE ITEM UNDER A HEADING IF NECESSARY

DESCRIBE → RT ARM, (C) NECK, (C) FOREARM RT FOREARM, RT HAND LEFT HAND, RT CALF, LEFT CALF

HEIGHT	WEIGHT	COMPLEXION	EYES	HAIR	TEETH
5'-1"	LIGHT: UNDER 90	PALE	BLUE	BLOND	PROTRUDE UPPER
5'-2"	100	LIGHT DARK	BROWN	RED	PROTRUDE LOWER
5'-3"	110	RUDDY	GRAY	BROWN ☒	IRREGULAR
5'-4"	120	DARK SWARTHY	HAZEL	BLACK	GOLD VISIBLE
5'-5"	130	BLEMISHED	GREEN ☒	GRAY	STAINED
5'-6"	140	LIGHT BROWN	BLACK	MIXED GRAY	VISIBLE DECAY
5'-7"	150	MEDIUM BROWN	DEFECT	WHITE	FALSE
5'-8"	MED: 160	DARK BROWN		BALD ☒	MISSING
5'-9"	170	MUSTACHE		PART BALD	WHITE - GOOD
5'-10"	180	BEARD		CURLY	
5'-11"	190	GOATEE		STRAIGHT	
6'-0" ☒	200 ☒			BUSHY	
6'-1"	HEAVY: 210	NOSE	GLASSES	OTHER	VISIBLE SCARS MOLES - TATTOOS
6'-2"	220	BROKEN	DARK RIM		S / M
6'-3"	230	POINTED	LIGHT RIM		FACE - RIGHT
6'-4"	240	ROMAN	SILVER RIM		FACE - LEFT
6'-5"	250	WIDE	GOLD RIM		NECK
6'-6"	260	HOOKED	RIMLESS		CHEST
6'-7"	OVER 270	PUG	CONTACT LENS		NOSE
		STRAIGHT			RIGHT HAND-ARM
		LARGE			LEFT HAND-ARM
BUILD					BACK
SLENDER	STOUT				LEG RIGHT
MEDIUM ☒	HEAVY				LEG LEFT
STOCKY					OTHER

Form 291

BEST AVAILABLE COPY

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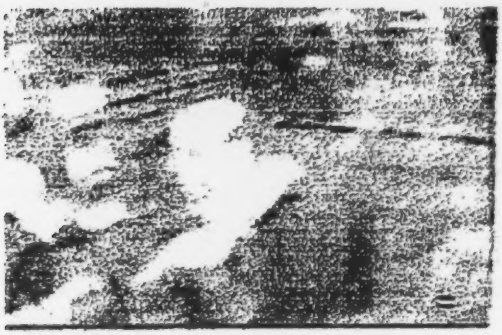
AME: RUSSO,CHRISTOPHER J          NUMBER: 00258290                DOB: 10/24/1974
OCATION: BRIDGEPORT CCC           JURISDICTION: BRIDGEPORT CC     STATUS: ACCUSED
OCATION ENTRY TYPE: READMISSION, CONTINUED                        DATE: 09/19/2002
FFENSE: 53A134      ROBBERY, FIRST DEGREE                  BF     BOND:  100000
ENTENCE:  MIN:   0 Y  0 M   0 D  MAX:   0 Y  0 M   0 D            DETAINERS:
ELEASE DATES:   MIN: 00/00/0000  MAX: 00/00/0000          ESTIMATED:
PECIAL MANAGEMENT:
                                        DNA N DRWN ..... CONFM .....
ACE: WHITE            SEX: MALE         HAIR COLOR: BROWN      EYES: GREEN
EIGHT: 6 FT 01 IN     WEIGHT: 210 LBS   MARITAL STATUS: M      DEPENDENTS: 1
DUCATION LEVEL: 12    VET STATUS: N     MED INSURANCE:  N      MVD:
SN:  043-78-1171      FBI #: 402025KB2  OTHER #:               SPBI #: 613715
IRTHPLACE:   BRIDGEPORT                 CITIZENSHIP: UNITED STATES
OME ADDRESS: 465 CHESTNUT TR  TOWN: OXFORD              STATE: CT  ZIP:

 * * * * * * * * * * * EMERGENCY CONTACT INFORMATION * * * * * * * * * * *
AME:   DONNA RUSSO                RELATION: MOTHER                PH: 203  720 2213
TREET: 465CHESTNUT TREE HIL       TOWN: OXFORD       STATE: CT ZIP: .....

RIOR LOCATION: 900     FILE LOCATION: 123     MED FILE:
NITIAL DOC ADMISSION: 08/22/1997          LATEST DOC ADMISSION: 09/19/2002
RT2 10/18/2002 CT DEPT OF CORRECTION    - FACE SHEET DISPLAY  RT50  CS035  END

ANSACTION: RT50   NUMBER:  00258290
```



* * * *

2. State whether during the subject time period the City logged-in the subject tapes relative to the subject robbery involving the plaintiff. If so, please state:

Don't recall.

A. The date and time that the subject tapes were logged-in to the log book in the evidence room at the Bridgeport Police Department.

See above.

B. The name, address, and badge number of any person who logged in the subject tapes.

See above.

C. The subsequent date and time (if any) that the subject tapes were logged out or in; and by whom.

See above.

3. State the name, address, and badge number of all police officers and persons assigned to administrative duty to oversee, safe-keep, and maintain the evidence room during the subject time period.

I do not know or have access to this information.

4. State whether the City or any of the defendants in this case, or any other police officer ever viewed the subject tapes. if so, please state the following:

Yes. Detective Borona.

A. The name, address and badge number of the viewing person.

Detective Borona, 300 Congress Street, Bridgeport, CT

Detective DePietro, 300 Congress Street, Bridgeport, CT

Possibly Sergeant Sherpo, 300 Congress Street, Bridgeport, CT

B. The date and time of the viewing(s).

August 1, 2003 After 1600 hours.

5. State whether the plaintiff was ever arrested by the City prior to the subject robbery. If so please state the following:

Yes

A. The date and time that prior photographs of the plaintiff were taken.

Only had knowledge of one photo of the plaintiff and did not know the date.

B. The location and by whom prior photographs of the plaintiff were kept.

300 Congress Street, Bridgeport Police Department.

OATH

I, Jeremy DePietro, hereby certify that I have reviewed the above Interrogatories and responses thereto and that they are true and accurate to the best of my knowledge and belief.

/s/ Jeremy Depietro
Jeremy Depietro

Subscribed and sworn to before me on this 23rd day of February, 2004

/s/ Barbara Brazzel-Massaro
Barbara Brazzel-Massaro
Commissioner of the
Superior Court

* * * *

C. The substance of the request

See above.

D. The date that the request was honored, if any, and the persons present

See above

9. State whether any of the defendants consulted with any state's attorneys about subject tapes, prior photographs, and/ or exculpatory evidence concerning the plain during the subject time period. If so, please state the following:

I did not and do not know as to anyone else.

A. Date of conversation

See above.

B. Name, address and Badge Number of the individuals involved in the conversation

See above.

C. The substance of the conversation

See above.

* * * *

B. The name of the individuals listed as defendants

See above

C. The court, location, and docket number

See above

D. The substance of any rulings, pre or post judgment and the name of the judge.

See above

12. State whether during the subject time period, any of the defendants or any state's attorneys determined that the plaintiff was innocent of the subject robbery, if so, please state:

As to me no. I was never contacted or spoke to any State's Attorney after the arrest.

A. The name of the person making the determination

See above

B. The date of the determination

See above

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL NO. 3:03CV1972 (AWT)

CHRISTOPHER RUSSO,

Plaintiff,

vs.

CITY OF BRIDGEPORT, OFFICER JEREMY DEPIETRO, OFFICER JOHN ROSA, DETECTIVE CHRISTOPHER BARONA, SERGEANT JOSEPH SHERBO,

Defendants.

JULY 15, 2004

DEPOSITION OF JEREMY DePIETRO

Taken before Brenda K. Granfield, RPR, LSR 00147, a Court Reporter and Notary Public within and for the State of Connecticut, pursuant to the Federal Rules of Civil Procedure, at the offices of Weinstein, Weiner, Ignal, Napolitano & Shapiro, 350 Fairfield Boulevard, Bridgeport, Connecticut, on Thursday, July 15, 2004, commencing at 10:26 a.m.

[25] MR. WEINSTEIN: The transcript will show—

MS. BRAZZEL-MASSARO: You don't need to argue with me.

MR. WEINSTEIN: The transcript will show what it shows.

BY MR. WEINSTEIN:

Q Now, sir, you do recall seeing it the same day or the next day, right?

A Yes.

Q And when I say it, I mean the contents of it, not just the tape, right?

A Correct.

Q That was at the Bridgeport police headquarters?

A Yes, sir.

Q And then you put it back into your drawer and locked it, right?

A Yes, sir.

Q Did you see—withdrawn. Was that the only time you saw the contents of that tape?

A No.

Q How many other times did you see the contents of the tape?

[26] A One other time.

Q And when was that?

A That was, again, the specific date I don't know. Sometime after—shortly after the first initial viewing, I viewed the tape again.

Q Shortly after?

A Sometime after.

Q Any time up to today could be sometime after. As nearly as you can recall, you're telling me you saw it one more time after that first viewing, right?

A Yes, sir.

Q Was it within the week? Was it within the month?

A Within the week.

Q Within the month?

A Within the week.

Q Within the week. Oh, so you saw it twice the week after it came into your possession.

MS. BRAZZEL-MASSARO: Objection to the form. He said within the week. I want to be sure we're clear.

MR. WEINSTEIN: He told us the first time was within a day. And then I asked him did he see it again, and he said [27] within the week.

MS. BRAZZEL—MASSAR: You're absolutely right, Burt, but you just asked a different question. That's why I want to make sure we're correct here. I don't want to have him confused and the record confused.

BY MR. WEINSTEIN:

Q Are you confused, sir?
A From your last—
Q All right.

MS. BRAZZEL-MASSARO: Just repeat the question.

BY MR. WEINSTEIN:

Q I don't want to confuse you. I want to make this clear.

You told me that you recall seeing the contents of the tape within a day or two after you came into possession of it, right?

A Yes, sir.
Q And you told me that you saw it a second time within a week after it came into your possession, correct?
A Within the week, yes, sir.
Q And those are the only two times you saw [28] the tape.
A Yes. Yes, sir, the contents of the tape.
Q The contents. Not the physical container.
A Correct.
Q Now, so you saw the tape two times within a week of August 1, 2002, correct?
A Yes, sir.
Q Let me show you something and ask you if that's *your* signature.
A That's my signature up top there.
Q That's your signature.

A Right.

Q Okay. It says Oath at the top of the page and your signature, and then you swore to the truth of what was in here before Attorney Massaro, right?

A Yes, sir.

Q And you swore to the truth of what precedes this oath page on October—sorry—February 23, 2004; is that correct?

A Yes, sir.

Q And that oath page preceded something dated February 18, 2004, that is headed Request—sorry—it's headed Defendant Jeremy DePietro's Response to Request for Disclosure and Information of Documents; is that correct?

[29] A Yes.

Q And did you read the questions and the answers before you signed the oath page?

A Yes.

Q Now, let me call your attention to question number 4 and answer number 4. Let me read this into the record.

Question number 4 says, "State whether the City or any of the defendants"—now, do you understand that you were a defendant in this case?

A Yes, sir.

Q So any of the defendants would refer to you, correct?

A Yes, sir.

Q —"any of the defendants in this case or any other police officer ever viewed the subject tapes. If so, please state the following": And then there are three names, Barona, DePietro, and Sergeant Sherbo; and then B, "the date and time of viewing." And what does the answer to date and time of viewing say?

A "August 1st, 2003 after 1600 hours."

Q You just told me that you only saw the tape twice within a week of it coming into your possession on August 1, 2002. Now your sworn answer [30] to the interrogatories in

this case say that you first saw it on August 1, 2003. Which of those sworn answers of yours is true?

A 2002. August 1, 2002 after 1600 hours would be the correct answer.

Q So your sworn answer to the interrogatories is not true?

A My answer to the sworn interrogatory was correct at the time I gave it. It may be a misprint.

Q So your sworn answer to the interrogatories was corrects, and the time changed since then?

MS. BRAZZEL-MASSARO: Burt, do you want to be argumentative with him? You can be argumentative. Look at the answer, August if 2003. If anybody in their right mind looked at that, they'd say it's a typographical error. If you want to argue with him, argue with him. The answer is there. He told you the answer. He gave you the answer correctly. Don't argue with him.

MR. WEINSTEIN: If you have a motion to make, make it.

[31] MS. BRAZZEL-MASSARO: I'm not making motion. I'm just saying don't argue with him in the deposition.

BY MR. WEINSTEIN:

Q Why did you sign off and swear to a statement saying that you saw it in 2003 when apparently you remember seeing it in 2002?

A I may have read over it quickly and I didn't catch the error prior to my signing it. However, that is an error.

Q Now, were you aware—if you can recall, did you see the videotape, that is, the contents, not just the container, in April of 2003?

A No.

Q Did you ever find out what the disposition of the charges against Mr. Russo and the case you were in charge of was?

A Specific disposition, no, I do not. I was never told that.

Q So if I tell you that the charges against Mr. Russo were dismissed by Judge Damiani on April 23, 2003, would you be surprised to hear that?

MS. BRAZZEL-MASSARO: Objection to form.

MR. WEINSTEIN: You can answer.

* * * *

* * * *

4. State whether the City or any of the defendants in this case, or any other police officer ever viewed the subject tapes. If so, please state the following:

Yes. Detective Borona.

A. The name, address and badge number of the viewing person.

Detective Borona, 300 Congress Street, Bridgeport, CT

Detective DePietro, 300 Congress Street, Bridgeport, CT

Possibly Sergeant Sherpo, 300 Congress Street, Bridgeport, CT

B. The date and time of the viewing(s).

August 1, 2003 After 1600 hours.

5. State whether the plaintiff was ever arrested by the City prior to the subject robbery. If so please state the following:

Yes

A. The date and time that prior photographs of the plaintiff were taken.

Only had knowledge of one photo of the plaintiff and did not know the date.

B. The location and by whom prior photographs of the plaintiff were kept. 300 Congress Street, Bridgeport Police Department.

6. State the name, address and badge number of all Bridgeport police officers relative to the subject robbery:

A. Assigned to investigate the subject robbery.

Detective DePietro #149

B. Spoke to the plaintiff in connection with the subject robbery.

I only know I attempted to speak with him.

C. Collected evidence in connection with the subject robbery.

Detective DePietro #148

D. Viewed the subject tapes.

Detective Borona
Detective DePietro #148

E. Viewed prior photographs of the plaintiff.

Detective DePietro #148
I viewed one (1) photograph.

7. State whether the plaintiff, or his attorney Joseph Mirsky, ever requested the City or any of the defendants or any other police officer of the defendant City, or any state's

OATH

I Jeremy DePietro, hereby certify that I have reviewed the above interrogatories and responses thereto and that they are true and accurate to the best of my knowledge and belief.

/s/ Jeremy Depietro
Jeremy Depietro

Subscribed and sworn to before me on this 23th day of February, 2004

/s/ Barbara Brazzei-Massaro
Commissioner of the
Superior Court

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL NO. 3:03CV1972 (AWT)

CHRISTOPHER RUSSO,

Plaintiff,

vs.

CITY OF BRIDGEPORT, OFFICER JEREMY DEPIETRO, OFFICER JOHN ROSA, DETECTIVE CHRISTOPHER BARONA, SERGEANT JOSEPH SHERBO,

Defendants.

JULY 15, 2004

DEPOSITION OF JEREMY DePIETRO

Taken before Brenda K. Granfield, RPR, LSR 00147, a Court Reporter and Notary Public within and for the State of Connecticut, pursuant to the Federal Rules of Civil Procedure, at the offices of Weinstein, Weiner, Ignal, Napolitano & Shapiro, 350 Fairfield Boulevard, Bridgeport, Connecticut, on Thursday, July 15, 2004, commencing at 10:26 a.m.

* * * *

[39] right?

A Yes, sir.

Q And some time after that you took it out of the desk again, right?

A Yes, sir.

Q What did you do with it physically after you took it out of the desk?

A Physically handed it to Inspector Donovan.

Q And after you physically handed it to Inspector Donovan, did you ever get it back to put it back in your desk drawer?

A No, sir.

Q And was there any receipt given for it by inspector Donovan?

A No, sir.

Q You just handed it to him?

A Yes, sir.

Q Now, you just indicated that you handed it—if I understood you—to Inspector Donovan sometime during 2002; is that correct?

A Yes, sir.

Q Would that have been before Thanksgiving?

A Again, I don't want—I don't want to guess at the date.

Q I didn't ask you a date. I said was it [40] before Thanksgiving?

A I'd have to answer a date, I don't know after and I don't want to guess and say—I don't want to give you a guess answer. I'm trying to be as specific as possible.

Q I'm not asking for as specific as possible, sir. I'm asking for your best estimate. Specific as possible is not part of my question.

MS. BRAZZEL-MASSARO: If you can't answer, you can't answer.

THE WITNESS: I really can't answer. I can't estimate, and I don't want to guess.

BY MR. WEINSTEIN:

Q Was it within a week of the time you looked at it?

A The first week, no. It was not within the first week.

Q Now, according to your sworn answer to interrogatories, you said that Detective Barona and possibly Sergeant

Sherbo viewed the tape as well as you. Were you together with them when it was being viewed?

A I'm not sure if I was with Detective [41] Barona at the time of the viewing. I'm not sure.

Q Did there come a time when you just gave it to him and said—did—the there come a time when you just gave it to him to view and then he returned it to you to put in your desk?

A I don't know the specific circumstances surrounding that, you know, the viewing by Detective Barona.

Q Why did you tell us under oath in response to the question "State whether the City or any of the defendants in this case or any of the police officers ever viewed the subject tapes; if so, please state the following": and you say, "Yes, Detective Barona"? And you swore to that, and you swore to that in February. Now, do you recall that answer and your oath page saying that you swore to it?

A Yes, sir.

Q You do. Why did you swear to Detective Barona seeing it—you swore to that in February of 2004—if now you told us you don't know whether or not?

MS. BRAZZEL-MASSARO: Objection to the form of the question. He didn't say he didn't know. I think you asked him a

* * * *

4. State whether the City or any of the defendants in this case, or any other police officer ever viewed the subject tapes. If so, please state the following:

I viewed the tape with detective Depietro.

A. The name, address and badge number of the viewing person.

Christopher Borona	Detective Jeremy Depietro
300 Congress Street	300 Congress Street
Bridgeport, CT 06604	Bridgeport, CT 06604

B. The date and time of the viewing(s).

I do not recall.

5. State whether the plaintiff was ever arrested by the City prior to the subject robbery. If so please state the following:

I do not know.

A The date and time that prior photographs of the plaintiff were taken.

I do not know.

B. The location and by whom prior photographs of the plaintiff were kept. If any photos, they are at Photo Database ID Unit.

6. State the name, address and badge number of all Bridgeport police officers relative to the subject robbery:

A. Assigned to investigate the subject robbery.

I responded to call and did the initial report which was forwarded to the Detective Bureau.

B. Spoke to the plaintiff in connection with the subject robbery.

I don't know.

C. Collected evidence in connection with the subject robbery.

No

D. Viewed the subject tapes.

No

E. Viewed prior photographs of the plaintiff.

No

7. State whether the plaintiff, or his attorney Joseph Mirsky, ever requested the City or any of the defendants or any other police officer of the defendant City, or any state's

DEFENDANT'S CERTIFICATION

This is to certify that I, *John Rosa*, defendant in the above-entitled action, have read the foregoing answers to interrogatories and production and state that they are true and accurate to the best of my knowledge, on this 6 day of Feb., 2004

/s/ Jeremy Depietro
Jeremy Depietro

STATE OF CONNECTICUT)

) ss: Feb 6, 2004

COUNTY OF NEW HAVEN)

On this 6th day of Feb, 2003, before me, the undersigned officer, personally appeared *John Rosa* signer and sealer of the foregoing instrument, and who acknowledged the same to be his free act and deed.

/s/ Barbara Brazzel-Massaro
Commissioner of the
Superior Court

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL NO. 3:03CV1972 (AWT)

CHRISTOPHER RUSSO,

Plaintiff,

vs.

CITY OF BRIDGEPORT, OFFICER JEREMY DEPIETRO, OFFICER JOHN ROSA, DETECTIVE CHRISTOPHER BARONA, SERGEANT JOSEPH SHERBO,

Defendants.

JUNE 9, 2004

DEFENDANT JEREMY DEPIETRO'S
AMENDMENT TO REQUEST FOR DISCLOSURE
OF INFORMATION AND DOCUMENTS

2. State whether during the subject time period the City logged-in the subject tapes relative to the subject robbery involving the plaintiff, If so, please state:

A. The date and time that the subject tapes were logged-in to the log book in the evidence room at the Bridgeport Police Department.

B. The name, address, and badge number of any person who logged in the subject tapes.

C. The subsequent date and time (if any) that the subject tapes were logged out or in; and by whom

ANSWER: The surveillance tape from Amoco was not logged into the property room.

THE DEFENDANTS

/s/ Barbara Brazzel-Massaro
Barbara Brazzel-Massaro
Associate City Attorney
OFFICE OF THE CITY ATTORNEY
999 Broad Street - 2nd Floor
Bridgeport, CT 06604
Telephone #203/576-7647
Fed. Bar No. 05746

CERTIFICATION

This is to certify that a copy of the foregoing "Defendant Jeremy Depietro's Amendment to Request for Disclosure of Information and Documents" has been mailed, postage pre-paid, on this 9th day of June, 2004, to:

Jeffrey D. Ginzberg, Esq.
Perelmutter, Potash & Ginzberg
11 Bank Street
P.O. Box One
Seymour, CT 06483

Burton M. Weinstein, Esq.
Weinstein, Weiner, Ignal, Napolitano & Shapiro
350 Fairfield Avenue
Bridgeport, CT 06604

/s/ Barbara Brazzel-Massaro
Commissioner of the
Superior Court

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL NO. 3:03CV1972 (AWT)

CHRISTOPHER RUSSO,

Plaintiff,

vs.

CITY OF BRIDGEPORT, OFFICER JEREMY DEPIETRO, OFFICER JOHN ROSA, DETECTIVE CHRISTOPHER BARONA, SERGEANT JOSEPH SHERBO,

Defendants.

JULY 15, 2004

DEPOSITION OF JEREMY DePIETRO

Taken before Brenda K. Granfield, RPR, LSR 00147, a Court Reporter and Notary Public within and for the State of Connecticut, pursuant to the Federal Rules of Civil Procedure, at the offices of Weinstein, Weiner, Ignal, Napolitano & Shapiro, 350 Fairfield Boulevard, Bridgeport, Connecticut, on Thursday, July 15, 2004, commencing at 10:26 a.m.

[35] not it was logged in, right?

A Where does it say that?

MS. BRAZZEL-MASSARO: You're asking him two different—

BY MR. WEINSTEIN:

Q That's the original one I read, the one you said you recalled signing and identified your signature on, the original

question, the original number 2, it says "Don't recall"; is that correct?

A Yes, sir.

Q When you signed that sworn statement saying you don't recall whether it was logged in, you knew that the tape was locked in your desk drawer, right?

A No.

Q For how long was the tape locked in your desk drawer other than when you took it out to look at it that week?

A Again, I don't even want to guess at a specific time.

Q I'm not asking a specific minute, second, nanosecond, hour.

A You said how long. That's specific, pretty specific.

Q As best you [36] can recall, as nearly as you can recall, for how long was it in there?

A Again, I don't want to guess and, you know, say a shorter time period or a longer time period. I don't even want to guess at that.

Q I want your best recollection as near as you can recall—I'm not expecting a specific time. Give me a month, *give* me a season, give me a year. Give me your best recollection.

MS. BRAZZEL-MASSARO: I'm going to object to the form. I think he says he doesn't recall. I think you're asking him to answer a question he just doesn't have a recollection of.

BY MR. WEINSTEIN:

Q How long?

MS. BRAZZEL-MASSARO: I'm going to object to the form again.

THE WITNESS: Again, when you say give me a time, I don't have a how long——when you say how long, I don't know how long. For me to guess, I think—

BY MR. WEINSTEIN:

Q Was it there all of 2002?
A I'm sorry?
Q Was it in your desk all of 2002?

{LOGO] DEPARTMENT OF POLICE
City of Bridgeport, Connecticut
POLICY AND PROCEDURE

NUMBER: 4.18
Date of Issue: Jan. 1987
Distribution: All Personnel

SUBJECT: COLLECTION AND PRESERVATION OF EVIDENCE

4.18.1 Initial Precautions

The skilled recognition, evaluation, collection, marking, safeguarding, and examination of evidence are vital in criminal investigation.

Mental impressions are often forgotten or their details confused. A memorandum may refresh the recollection of an entire scene. Even when a member of the Department has forgotten the details of an event, and his notes do not refresh his memory, the notes themselves may be admissable in evidence.

A member of the Department first at the, scene of a crime and the investigator assigned to the investigation shall record their observations of the scene as well as the relevant statements of suspects and witnesses, whether made casually or as a formal statement. Any other member of the Department obtaining a relevant statement shall record and deliver it to the officer in charge of the investigation.

No officer shall. disturb evidence found at the scene of a crime. He shall call it to the attention of the detective in charge. The detective is responsible for its handling and shall determine whether the evidence should bc photographed, analyzed or measured.

To preserve the full legal value of evidence, care must be taken that:

a. The nature and source of the evidence are precisely identified.

b. Where possible, the examining agency receives the evidence in the quantity and condition necessary for proper examination.

c. "Chain of custody" is maintained.

Evidence should pass through the control of as few persons as possible and never outside the control of properly designated examination.

4.18.2 Handling and Safeguarding

* Evidence must be carefully handled so that its value is not impaired.

* When bloodstains, etc. on objects such as walls, floors, furniture and automobiles are difficult to remove, the detective shall request the services of the state Laboratory. Improper removal may destroy the evidence.

* Care must be taken to avoid the introduction of misleading physical traces or a surface to be examined for fingerprints such as the fingerprint of a member of the Department.

* Evidence, particularly glass, paper or china and similar items, must be protected from physical damage.

Unless evidence is carefully handled and packed, fingerprints, palm prints, tool marks or other traces may be destroyed.

4.18.3 Preventing Chemical Change and Contamination

Perishable evidence, particularly blood and other substances of human origin, must be protected against chemical change and contamination. It shall be delivered promptly to the examining laboratory. Bloodstains should be dried quickly and completely as by directing a fan on the stain. This must be done carefully so that the evidence or other perishable evidence be subjected to unnecessary heat by placing it near a radiator, etc., or exposing it to direct sunlight.

Perishable evidence, such as food, blood and other organic substances, should be refrigerated when it cannot be promptly delivered to the State Laboratory Blood and other perishable evidence must also be protected against freezing since freezing may cause physical or chemical degrees Fahrenheit.

4.18.4 Marking and Preventing

An officer who comes into possession of evidence shall promptly mark it for future identification and secure it against tampering. Such marking should be done so as not to impair the value of the evidence or prevent its processing. The evidence shall be placed in a Property Envelope, or suitable container or wrapping paper when practical. Evidence tags shall be attached to the evidence or its container.

a. Evidence-will be properly safeguarded, by booking into the Record Room as soon as practicable.

b. Evidence that is to be examined or analyzed shall be placed in a thoroughly clean fan dry container. No wet or soiled envelope container or wrapping paper will be used.

Different articles shall be packaged separately. Liquids will be sent in a clean glass container and the container carefully wrapped. Articles to be examined for prints shall be carefully packed to avoid breakage and to avoid exposing prints to friction from the wrapper. Evidence that may lose some of its properties through exposure to the air shall be sealed in its container with tape.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL NO. 3:03CV1972 (AWT)

CHRISTOPHER RUSSO,

Plaintiff,

VS.

CITY OF BRIDGEPORT, OFFICER JEREMY DEPIETRO, OFFICER JOHN ROSA, DETECTIVE CHRISTOPHER BARONA, SERGEANT JOSEPH SHERBO,

Defendants.

NOTICE

The Defendant, City of Bridgeport, has submitted the interrogatories and production addressed to John Sherbo to the Bridgeport Police Department and the interrogatories and production were returned with a notation that there is no John Sherbo employed by the Bridgeport Police Department

THE DEFENDANT CITY OF BRIDGEPORT

/s/ Barbara Brazzel-Massaro
Barbara Brazzel-Massaro
Associate City Attorney
OFFICE OF THE CITY ATTORNEY
999 Broad Street – 2nd Floor
Bridgeport, CT 06604
Tel: #203/576-7647/Fed. Bar #05746

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL NO. 3:03CV1972 (AWT)

CHRISTOPHER RUSSO,

Plaintiff,

VS.

CITY OF BRIDGEPORT, *et al*,

Defendants.

JULY 30, 2004

Pretrial deposition taken in the above-entitled action on behalf of the defendant(s), before Dawn C. Cuff, Lic. No. 00142, a Notary Public, pursuant to the Practice Book Civil Rules of Procedure, at the Office of the City Attorney, 999 Broad Street, Bridgeport, Connecticut.

[53] holding cell—

Let me just go back. Were you brought into the booking area in Bridgeport—

A Yes.

Q —like the booking area that you had been in before?

A Yes. It was still morning time. I do know that.

Q So you were brought into that holding cell in the booking area?

A Yes.

Q Do you remember which police officer actually escorted you into the booking area in Bridgeport?

A Bob Martin.

Q When you went into that booking area holding cell, did any of the police officers come in to talk to you there in the holding cell?

A No.

Q What happened next?

A I waited for a little while and then Detective DePietro came and got me for interrogation.

Q Can you describe Detective DePietro?

A He was short and skinny. A clean-shaven [54] face. Short hair.

Q Did he identify himself?

A Yes.

Q When you say that he came to get you, did he come to the holding cell?

A Yes.

Q Where did he bring you?

A He brought me to interrogating. I guess that's what they call it there. A little office.

Q Right there in the booking area?

A They brought *me* downstairs.

Q And you went into an office?

A Yes.

Q Did you talk to him?

A Yes, I did.

Q Can you tell me, as best as you recall, what did Detective DePietro say to you?

A Well, he came in with another detective. He sits down and I asked him what was I being charged with. He told me robbery in the first with a firearm. And then the first thing out of my mouth was, "When did this happen?" And he said that it happened August 1st.

Then I asked him, you know, what was the [55] proof, the evidence that you have against me." And he says, We have a surveillance of you." I asked to see. He only showed me a tiny little picture of—just from the neck up. And I said, "Well, if it happened August 1st," I said, "does this guy have

short sleeves on?" You know, to show the arms. "I have tattoos." And then he says, "Hold on one second."

Him and the other detective leave. Then they come back. And they come back with a magnifying glass and a ruler, joking around with my tattoos, and they say, "You know it's you. Confess. The guy has tattoos. Stop playing with us. If you play ball, well try to get you three years from the prosecutor, and if you don't, you'll probably end up with around eight years."

Q This other police officer that was with him, do you know who that was?

A He did tell me who he was, but I was more fixated on DePietro I can't remember his name.

Q What did the other one look like?

A Husky. Tall. He looked like he was mid-forties.

Q Was he in plain clothes?

[56] A Yes.

Q Going back to the conversation that you had with Officer DePietro, can you tell me did you have this conversation with him when you were in a room?

A Yes.

Q Were you sitting talking to him like we are, face-to-face, this way?

A Yes.

Q When he came in to talk to you, you started to ask him questions about the particular crime that you were being accused of?

A Yes.

Q Why did you raise the issue of tattoos with him?

A Because being into tattoos the way I am, the first thing about me that makes me original is my tattoos.

Q At that point when he showed you the picture, were you able to see any tattoos on the individual?

A It was like either ripped or folded. All I could see was the head and that was it.

Q When you say the head, tell me what the picture looked like, the head.

[57] A The head, it was fuzzy. It was black and white. But even I showed him differences in that photo.

Q What differences did you show him?

A He had a flatter nose. It looked like it was a straighter hairline than me. I mean, when I looked at it, very easily I could tell that that wasn't me.

Q Were there any other marks on this particular person that you saw that made you sure that it wasn't you?

A Yeah. I remember the head was very small. It was black and white, fuzzy.

Q How much of the head could you see? Did you see just to the chin or did you see to the shoulders? How much of the head could you see?

A I seen from the neck up.

Q From the neck up?

A Yes.

Q Were you able to see any tattoos on the neck?

A No. The guy had a towel on his neck.

Q Did Officer DePietro ask you at any point if you had ever been arrested before this by the [58] police department?

A Yes.

Q What did you tell him?

A I told him once.

Q Did you give him a date?

A I didn't know offhand, but I knew it was approximately one year before.

Q At that point did you tell him any other reasons why it couldn't have been you that did that particular crime?

A I kept on going back to the tattoos and he kept on telling me that the guy had tattoos.

Q How long did you have this conversation with him?

A Approximately two hours. They kept on feeding me cigarettes and offering me soda and everything else. They

also offered to take me to the hospital for methadone because I was sick, if I confessed.

Q When you say sick, were you sick from—

A Dope sickness.

Q Had you been taking some narcotics before this?

A Yes.

[59] Q What, in fact, were you taking?

A Heroin.

Q How long before you *were* arrested had you—I don't know the terminology— taken heroin?

A About 20 hours.

Q About how often would you take the heroin?

A Twice a day.

Q So you were going through withdrawal? A Just starting.

Q When the police officers came into your room back in Oxford, did they do any search of the room or they just arrested you?

A They just arrested me.

Q When you were brought into the booking area, did they ask if you had any medical problems?

A I'm pretty sure that they did.

Q Did you tell them that you were going to be going through withdrawal as a result of the heroin?

A Yes, I did.

Q What were the symptoms that you were exhibiting for your withdrawal at that point when Detective DePietro came in?

A Only my knees were aching, that was it. And I wasn't even that bad at that time.

[60] Q At some point did it become more pronounced?

A It wasn't pronounced. It doesn't get worse until about a day later. I was very clear in everything that I saw and said that day.

Q Other than Officer DePietro and this other officer, did anybody else come in to talk to you?

A No.

Q Only those two?

A Yes.

Q At some point were you taken to court on that day?

A They made me—They said at the interrogation—because that it took too long, the interrogation. I think it was about twelve or one o'clock now. So they said I had to wait until the next day. So I sat there for another day and I went to court the next morning.

Q So you stayed in the booking the night of September 18th—

A Yes.

Q—and you were taken to court on September 19th?

A Yes.

* * * *

[75] Bridgeport Police Department after your arrest on September 18, 2002?

A No.

Q Other than the fact that you were beginning withdrawal on September 18, 2002, did you have any other physical problems?

A No.

Q At any time after your arrest on September 18, 2002, did you ever see Detective Bob Martin?

A No.

Q Did Detective Martin ever come to see you in either the booking area or that room that you were in while at the Bridgeport Police Department?

A No. DePietro came back up to the holding cells once or twice after the interrogation.

Q And when he came up, did he talk to you?

A Yes.

Q What did he say?

A He offered the methadone program if I would confess again.

Q What did you respond?

A I responded—At that point I brought up, you know, facial distinguishes. I had already brought up the tattoos and he kept on dismissing me.

* * * *

[80] Q You first met Attorney Mirsky, however, when you went to court; is that correct?

A No. He came to see me at North Avenue on the Sunday before we went.

Q So you actually visited with him on a Sunday before you went for your court appearance?

A Yes.

Q When you met with him on that date, did you make it clear to him that there was a videotape that was available?

A Yes.

Q As a result of that—

MR. GINZBERG: You say was available. There was a videotape. Whether or not it was available I don't think is fair to ask this witness.

MS. BRAZZEL-MASSARRO: I'll rephrase the question.

Q Did you tell Attorney Mirsky the first time that you met him that the police officers had told you about a videotape?

A Yes.

Q As a result of that, did you know if Attorney Mirsky did anything before you went to court [81] to try and get the videotape?

A Repeat the question, please.

MS. BRAZZEL-MASSARO: Could we read the question back?

(The pending question was read back by the reporter.)

MR. WEINSTEIN: I'm going to object as form, because I believe it gets into the area of attorney-client privilege. The source of the information I believe would have to be attorney-client, with Attorney Mirsky reporting to his client, and I don't think that's a proper question.

MS. BRAZZEL-MASSARO: I'll ask another question.

BY MS. BRAZZEL-MASSARO:

Q When you got to court after you had spoken to Attorney Mirsky, did he represent at that time to the Court that there was a videotape that you needed to view?

A From my belief, he had told me that he brought it to their attention.

Q But my question is different. In open court, okay, that first time that you were with [82] Attorney Mirsky, did he represent or ask the Court for the videotape?

A They didn't bring me upstairs most of the time. So I never went upstairs. He used to do it without me in the room.

Q So he would go to court and you would not necessarily be in the room?

A I would be downstairs in the holding room.

Q So you yourself have no specific information that would indicate that Attorney Mirsky was requesting the videotape?

A From what he was telling me and my mother, he told me he was constantly trying to get it. My mother was on his back constantly.

Q Did he provide you with any kind of letters that he sent to the prosecutor, any kind of correspondence to the Bridgeport Police Department regarding a request for the videotape?

A See, I wasn't in the room, my parents were, and they said that Attorney Mirsky did ask to see the tape.

Q And that was in court?

A That was in court.

Q If you remember, was that the first time [83] that he went to court for you?

A That I don't know.

Q How many times did Attorney Mirsky go to court for you where he appeared before the judge, if you know?

A Altogether I went to court, I think, around 10 times. I think I went upstairs maybe three of those times.

Q Do you know where this convenience store is located on Boston Avenue, the Amoco?

A Yes, I do.

Q Are you familiar with the area?

A I grew up in that area.

Q So that's close to where you lived on Grandfield Avenue?

A I mean, not close to it, but—

Q So it's an area that you were familiar with?

A Yes.

Q I showed you a Complaint, Defendant(s) Exhibit 1. If you can just go to that Complaint, paragraph 19, please. If you would just read that.

A Out loud?

Q No. Just read it to yourself. I'm going

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL NO. 3:03CV1972 (AWT)

CHRISTOPHER RUSSO,

Plaintiff,

vs.

CITY OF BRIDGEPORT, ETAL,

Defendants.

AFFIDAVIT

I Christopher Russo, being duly sworn, hereby depose and say:

1. I am over the age of 18 and believe in the obligation of an oath.

2. I am making this affidavit of my own personal knowledge.

3. I am the plaintiff in the above entitled civil rights action.

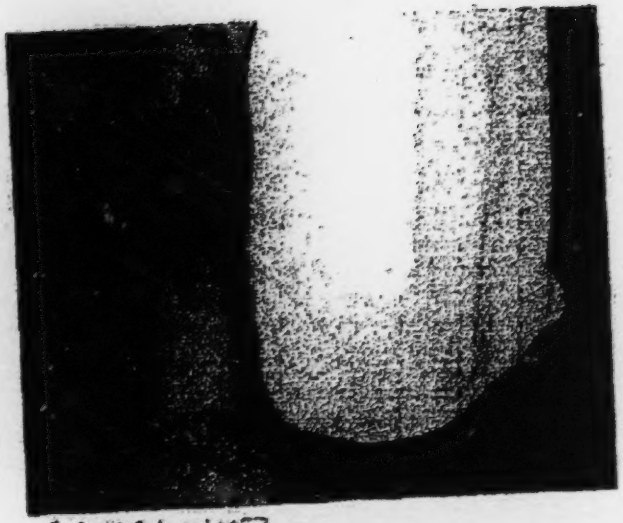
4. On September 18, 2002, I was interrogated by detectives from the Bridgeport Police Department.

5. During the interrogation one of the detectives identified himself as Jeremy DePietro; although the second detective did not identify himself, I now reasonably believe that the identify of that detective was Christopher Borona.

/s/ Christopher Russo
Christopher Russo

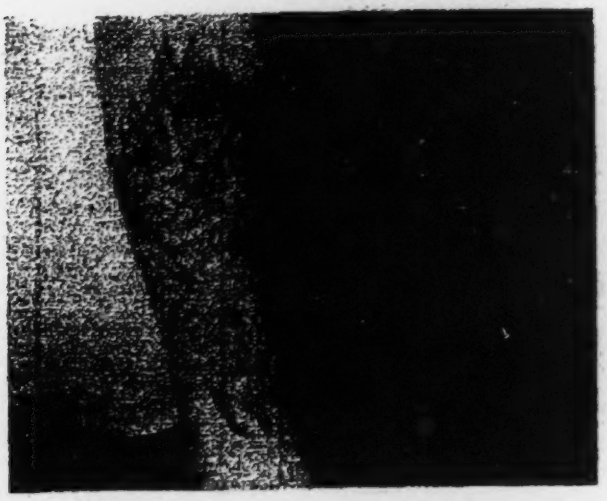
Sworn and subscribed before me this 6 day of December, 2004

BEST AVAILABLE COPY



Christopher Russo #35810

Right Arm 4/21/03



Christopher Russo #35810

Left Arm 4/21/03

SUPERIOR COURT JUDICIAL DISTRICT OF
FAIRFIELD AT BRIDGEPORT

No. CR020182908

STATE OF CONNECTICUT

vs.

CHRISTOPHER RUSSO

APRIL 23, 2003

BEFORE
HONORABLE RICHARD A. DAMIANI, JUDGE

APPEARANCES:

For the State:

JONATHAN BENEDICT, ESQ.
State's Attorney

For the Defendant:

JOSEPH MIRSKY, ESQ.

---

[1] THE COURT: Mr. Russo is here, Mr. Mirsky is here, Mr. Benedict is here.

MR. BENEDICT: Realizing that often the less said is better, I'm going to put on the record the facts that require the State to enter a nolle as in this case. The crime happened in the beginning of August of last year. And, it was a robbery of

a convenience store at what the perpetrator reported to be gunpoint, although one was not actually displayed.

The victim, the worker in the convenience store, gave a description of the robber to police immediately. Over the next weeks investigation was conducted, which included a review of a videotape taken of the robbery that included, of course, a. series of photographs or views of the perpetrator.

After that was done, an investigating officer had the opinion that he had come across that person before, that person being Mr. Russo. Mr. Russo's mug shot was placed in a eight photo array with seven other young white shaven-headed males. And from that, the victim selected Mr. Russo's photograph positively as the person who had robbed him approximately a month later.

After the case was transferred here, it was brought to our attention that Mr. Russo had fairly vivid tattoos on his arms as well on his neck. Part of the reason for the identification of Mr. Russo or [2] the arrest of Mr. Russo in this particular case is because the perpetrator in the photographs taken at the store had the portions of his neck, his entire neck completely covered by a towel which would have been fairly easily considered to be an effort to cover up the vivid tattoos that he carries on both sides of his neck.

We, thereafter, having heard about the tattoos on the arms, had still photographs developed from the videotape, and from the still photographs, I believe myself amongst other persons who have seen Mr. Russo in the courtroom all were reasonably convinced, if not completely convinced that Mr. Russo was, in fact, the person who appears in the still photos of the videotape taken at the convenience store.

And more importantly than that is from those still photos, you could not see what were claimed to be bare forearms, therefore, you could not see from the still photos any tattoos

whatsoever, you couldn't even tell whether it was a long sleeve shirt or a short sleeve shirt.

However, in continuing our investigation, we had Corrections take photographs of Mr. Russo's leg and arm tattoos, and they were delivered by Corrections to our office two days ago. We pre-tried the case yesterday, the insistence that it couldn't—was not Mr. Russo continued from his counsel.

[3] So, I had a talk—to sit down with a couple of investigators yesterday to actually view the videotape in the thought that perhaps the videotape gave somehow somewhat of a better view of the perpetrator than the stills that had been developed from the videotape. That, in fact, happened.

The videotape shows both sides of the perpetrator's left arm and one side of the forearm, and one side of the perpetrator's right forearm. And there very clearly are no tattoos on any of those.

Mr. Russo was arrested, I believe, somewhere between five and six weeks following the event. The only opportunity a person who had no tattoos at the time of the crime to acquire all those tattoos between then and now would have been presumably while he was still out on the street, certainly not after he had become incarcerated.

Just to double check on whether or not that could have been, we checked with Carla Scinto, Mr. Russo's former probation officer. And, I spoke to her yesterday, and she informed me that as of the time that Mr. Russo got off of probation with her, she's in the Milford office, approximately one year before the crime, he, at that time, had on all his—both his forearms very vivid tattoos which indicate that Mr. Russo's always had those tattoos. And, very clearly the perpetrator of this crime has no tattoos on his [4] arms.

So, as a result, the State would move the Court dismiss this matter.

THE COURT: Anything further, Mr. Mirsky?

MR. MIRSKY: No, your Honor.

THE COURT: You did your job. The matter is dismissed. Good luck, Mr. Russo.

MR. RUSSO: Thank you very much.

THE COURT: Okay.

MR. MIRSKY: See ya, Chris. Thank you, your Honor. Thank you, Mr. Benedict, I respect you, I always did.

(The matter was concluded for the day)

APPENDIX J

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

No. 3:03CV1792 (AWT)

CHRISTOPHER RUSSO,
Plaintiff(s),

v.

CITY OF BRIDGEPORT, *et al.*,
Defendant(s).

DEPOSITION OF CHRISTOPHER RUSSO

Pretrial deposition taken in the above entitled action on behalf of the defendant(s), before Dawn C, Cuff, Lic. No. 00142, a Notary Public, pursuant to the Practice Book Civil Rules of Procedure, at the Office of the City Attorney, 999 Broad Street, Bridgeport, Connecticut.

* * * *

[63] parents, any written statements to confirm that you were home on that evening?

A I can very easily.

Q I'm not asking if you can, but did you for purposes of this arrest get any statements from your parents that you were home that evening on August 1, 2002?

A They just told my lawyer. My lawyer said that would be good enough, Mirsky.

Q When you went to court the next day, can you tell me what happened when you went to court?

A Asked for a bond reduction. And the public defender came up to me and asked me what happened and I told him

that I was being charged with armed robbery with a firearm and that they told me that the guy on the surveillance camera had tattoos, but I told him that I know it's not me. I said I would like to see the tape and I would like to be able to distinguish my tattoos from his. The public defender said he'd see what he could do.

Q Who was the public defender?

A I don't remember.

Q Do you know what he looked like? I'm assuming that it was a he.

[64] A All you lawyers look a like to me.

(Off-the-record discussion.)

MS. BRAZZEL-MASSARO: I guess we can go back.

Q The public defender that you had, was it a male?

A Yes.

Q And we know that all these male public defenders look alike.

A I mean, I truthfully—a person in a suit, that's really all I could remember. He was a male. I cannot remember his name for the life of me.

Q Can you tell me was it a guy with a ponytail?

A I really don't think so. I don't remember a ponytail.

Q Do you remember if it was an older gentleman or a younger gentleman?

A The only thing I remember about him is that he said he was the guy's assistant. Because the guy was on vacation, so it wasn't even—That wasn't even he actual public defender I guess I wasn't supposed to get, but he said he would be acting as my public defender for the day.

[65] Q He was a lawyer, though, right?

A Yes.

MR. WEINSTEIN: Assumably.

Q How long did you have an opportunity to talk to him on September 19th?

A I was with him for about 15 minutes.

Q Did you talk to him before you went into court to see the judge?

A Yes.

Q I don't want to know what you discussed with him. But as far as the tape and that information, did you provide that information to him on that first day that you met him?

A To the prosecutor that I had?

Q Public defender.

A Public defender. Yes.

Q Did the public defender go with you to court when you appeared before the judge?

A Yes.

Q When you appeared before the judge on that date, did the public defender indicate anything about needing to see the videotape?

A It was just—The only thing he asked for was a bond reduction.

[66] Q So he didn't ask the judge could he see the video-tape?

A Not that I know of.

Q While you were right there while he was talking to the judge.

A No.

Q He didn't do it in open court?

A No.

Q He asked the Court for a bond reduction. Did the Court rule on that?

A They denied it.

Q Do you know who first set the bond?

A No.

Q What was the bond?

A A hundred thousand cash.

Q Do you know which judge it was that you appeared before the first time?

A No.

Q Which courthouse? Was it the one on Golden Hill?

A Low court. Golden Hill.

Q You call that, what, low court?

A That's what they called it.

Q That's what the sheriffs call it, right?

[68] Q After that day and the bond was denied, tell me what happened next.

A I was brought to North Avenue.

Q Did you have any other discussions with that public defender after you went to North Avenue?

A No, because my mom went to go get me a paid lawyer which she could afford.

Q Your mother was responsible for getting you an attorney to represent you?

A Yes.

Q When was the next time that you appeared in court?

A A few weeks later.

Q Who was your attorney when you went a few weeks later?

A I truthfully don't remember if I had Mirsky yet or if it was the next time. I'm pretty sure Mirsky was there for the next time I went to court.

Q Do you know what month that was?

A That was October.

Q I don't want to know about your conversations with Attorney Mirsky. Before you went to court with Attorney Mirsky, did you have an opportunity to talk to him?

[69] A Yes.

Q At any point before you went to court, were you able to convey to Attorney Mirsky the fact that there was a videotape that needed to be viewed?

A Yes.

Q Did you do that before you went to court?

A Yes.

Q Do you know whether or not Attorney Mirsky was able to get the videotape, to view it before you went to court?

A No, because he kept on telling me that he couldn't

obtain the tape.

Q Did you tell anybody else other than Attorney Mirsky about this videotape?

A That I wanted to see it?

Q Yes.

MR. WEINSTEIN: Do you mean then or at all?

MS. BRAZZEL-MASSARO: At all.

A I remember telling Mirsky. Dean Popkins was the assistant at the time.

Q I'm sorry, who?

A Dean Popkins. I talked to him, too. That was Mirsky's assistant.

* * * *

[71] time to get the tape. He was having a very hard time getting the tape.

Q Do you know specifically what he did to get the tape for you?

A He told my mom more what he was doing than me, to get the tape. He didn't want to worry me about it.

Q Did you also indicate to him that you had an alibi—

A Uh-huh.

Q —that evening?

A Yes.

Q Do you know if he did anything regarding the alibi?

A I mean, I know he—When we went up in front of the Court, I remember one day that Mirsky said to the prosecutor that, you know, Christopher Russo would like to know the differences, that he has tattoos and he would like to know if he could, you know, put his tattoos to the guy's tattoos on the tape and see the difference. And the judge said—Not the judge. The prosecutor I'm pretty sure said, "Well, whether he's guilty or not, we'll let a jury decide."

[72] Q Do you remember who the prosecutor was there?

A I don't remember.

Q Was that in open court?

A Yes.

Q Do you remember what month that was?

A When that one happened?

Q Yes.

A No, I don't.

Q At any time after you first spoke with Defective DePietro at the Bridgeport Police Department up until today, have you ever talked to him?

A Talked to who?

Q Officer DePietro.

A No.

Q Have you ever seen him at any time after that first time in the police department?

A No.

Q Did you ever see Officer DePietro before you met him in the Bridgeport Police Department on September 18, 2002?

A No.

Q You've also named Sergeant Sherbo. Do you

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

No. 3:03CV1792 (AWT)

CHRISTOPHER RUSSO,
Plaintiff(s),

v.

CITY OF BRIDGEPORT, *et al.*,
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DEPOSITION OF CHRISTOPHER RUSSO

Pretrial deposition taken in the above entitled action on behalf of the defendant(s), before Dawn C, Cuff, Lic. No. 00142, a Notary Public, pursuant to the Practice Book Civil Rules of Procedure, at the Office of the City Attorney, 999 Broad Street, Bridgeport, Connecticut.

* * * *

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

No. 3:03CV1972 (AWT)

CHRISTOPHER RUSSO,

Plaintiff,

v.

CITY OF BRIDGEPORT, OFFICER JEREMY DEPIETRO, OFFICER JOHN ROSA, DETECTIVE CHRISTOPHER BARONA, SERGEANT JOSEPH SHERBO,

Defendants.

DEPOSITION OF JEREMY DePIETRO

Taken before Brenda K. Granfield, RPR, LSR 00147, a Court Reporter and Notary Public within and for the State of Connecticut, pursuant to the Federal Rules of Civil Procedure, at the offices of Weinstein, Weiner, Ignal, Napolitano & Shapiro, 350 Fairfield Boulevard, Bridgeport, Connecticut on Thursday, July 15, 2004, commencing at 10:26 a.m.

* * * *

[59] A If I notice it.

Q If you noticed it, would you consider it exculpatory?

A It would be necessary to investigate further.

Q Okay. And so far as you know, did there come a time when still photographs were made of the portion of the videotape? You know, it went on for hours, I think a 10– or 12– hour loop, but for the time of the robbery, still photographs were made of the robbery going down. Did you ever see the still photographs made of the robbery?

A Yes.

Q And in those still photographs, did you happen to notice whether or not the perpetrator had no tattoos on his arms?

A I didn't notice either way. I wasn't looking—I didn't know if he did or didn't.

You were looking at the still photographs and the tape?

A I was looking at the suspect's tape.

Q When did you see the still photographs?

A Couple days after the initial incident.

Q Couple days after the initial—

A I would say couple days after the initial

(2)

FILED
JUL 30 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-1575

In the Supreme Court of the United States

CITY OF BRIDGEPORT, JEREMY DEPIETRO, OFFICER, AND CHRISTOPHER BORONA, DETECTIVE,

Petitioners,

v.

CHRISTOPHER RUSSO

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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Counsel for Respondent

QUESTION PRESENTED

Whether the court of appeals erred in determining that respondent is entitled to a trial on the claim that his 217-day imprisonment based on mistaken identification, accompanied by petitioners' concealment of exculpatory information, violated his constitutional rights.

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STATEMENT

Christopher Russo was mistakenly arrested for robbery and incarcerated for 217 days before the mistake was acknowledged and he was released. The court of appeals unanimously determined that the evidence in the summary judgment record would allow a jury to find that one of the petitioners "actively hid the exculpatory evidence" and was "deliberate[ly] indifferen[t] to Russo's incarceration and to his asserted innocence" (Pet. App. 22a) and that the other individual petitioner similarly engaged in "either intentional violation of, or deliberate indifference to, Russo's constitutional rights" (*ibid.*). The court therefore concluded that the district court erred in granting summary judgment in petitioners' favor, and held that Russo is entitled to a trial on his claim under 42 U.S.C. § 1983 that his prolonged detention violated his constitutional rights and on the facts relating to the individual petitioners' qualified immunity defense.

The certiorari petition targets only one discrete aspect of the court of appeals' ruling. The petition does not seek review of the court of appeals' determination that the individual petitioners were not entitled to qualified immunity on the basis of the summary judgment record before the district court. And it does not seek review of the court of appeals' reversal of summary judgment with respect to the City of Bridgeport. The only issue presented for review is whether the lower court erred in determining that the summary judgment record entitled respondent to a trial on his claim of a constitutional violation.

That interlocutory fact-bound ruling presents no question warranting this Court's attention. There is no conflict among the courts of appeals, the ruling below is consistent with this Court's precedent, and the Second Circuit's decision does not unsettle the law or impose a new duty to investigate on police officers. To the contrary, even petitioners themselves acknowledge (at 11-12) that the decision below is consistent with decisions of other courts of appeals dating back to 1993.

At bottom, petitioners' claim is that the court of appeals erred in its assessment of the summary judgment record: that the information available to the officers was not sufficiently exculpatory and that "the officers did nothing to hide or conceal the existence of" exculpatory evidence. Pet. 14, 15. Those determinations plainly do not merit this Court's attention. The petition should be denied.

1. The Robbery and Mistaken Arrest. On August 1, 2002, an Amoco gas station located in Bridgeport, Connecticut was robbed by an individual the cashier described as "a white male in his late 30s, between 5'6" and 5'8" tall, of medium build with a very short, blond crew cut." Pet. App. 2a. The store's surveillance camera captured the robbery. The police officers froze still photos of the perpetrator from the videotape, matched them against a photo database, and generated eight possible "hits." *Id.* at 3a, 123a-124a. One was a photo of respondent Christopher Russo. The officers showed the store clerk the photographs, which depicted only the faces of eight individuals, and the clerk identified Russo as the culprit to a "one hundred percent" certainty. *Id.* at 3a & n.1. The officers obtained a warrant, arrested Russo, and charged him with the robbery.

The evidence demonstrated that at the time of the robbery, Russo had extensive tattoos on his arms. The court of appeals stated that "[i]n addition to the distinctiveness of his tattoos, Russo's physical characteristics were different in important respects from those of the Amoco robber, as described by the cashier." Pet. App. 4a. Russo was 27 years old, six feet tall, and had brown hair but was balding. "He was, therefore, younger, taller, balder, and with different colored hair than the person whom the victim had described to the police." *Ibid.*

Officers DePietro and Borona interrogated Russo following his arrest. They informed Russo that the robbery had been recorded and advised him that " [i]f you play ball, we'll try to get you three years from the prosecutor, and if you

don't, you'll probably end up with around eight years." Pet. App. 173a. Russo immediately asked whether the videotape showed a robber with body tattoos. *Id.* at 172a-173a. He explained: "[B]eing into tattoos the way I am, the first thing about me that makes me original is my tattoos." *Id.* at 173a. DePietro and Borona "left the interrogation room and returned a while later holding a magnifying glass and a ruler. They then informed Russo that the videotape showed a perpetrator with tattoos." *Id.* at 5a.

The questioning continued. Knowing that Russo was suffering from heroin withdrawal, the officers told him that they would take him to the hospital for methadone if he confessed. Pet. App. 174-75a. Russo continued to maintain his innocence. He remained in jail for seven months until the charges against him finally were dismissed. *Id.* at 4a-7a.

On November 19, 2002, more than three months after Russo's arrest, an investigator for the state prosecutor "visited the Bridgeport Police Department property room to obtain the videotape. The investigator found that the tape was missing. Sometime after November 25, 2002, the investigator obtained the tape from Officer DePietro, who had it locked in the drawer of his desk." Pet. App. 6a. The investigator obtained a laboratory enhancement of the tape on January 22, 2003.

Russo's attorney had sought production of the tape on November 1, 2002. Sometime between January and April 2003, he was permitted to view the tape and "[i]mmediately thereafter, he told the state investigator that the person on the tape could not be his client." Pet. App. 7a.

"Finally, on April 22, 2003, due to defense counsel's 'insistence' on Russo's innocence, the prosecutor actually watched the videotape. The following day, after checking with a probation officer to verify that Russo's tattoos predated the crime," the State requested dismissal of the prosecution. Pet. App. 7a. The prosecutor stated in court that

"'"[t]he videotape shows both sides of the perpetrator's left [arm] and one side of the forearm, and one side of the perpetrator's right forearm. And there very clearly are no tattoos on any of those.'" *Ibid.* (citation omitted). The court dismissed the charges against Russo.

2. The District Court Proceedings. Russo filed suit in state court under 42 U.S.C. § 1983 against the City of Bridgeport, Officer DePietro, and three other police officers. He alleged constitutional violations arising out of his arrest and lengthy detention, claiming that defendants "lacked probable cause for [his] arrest, demonstrated reckless and malicious indifference to [his] claims of innocence, and failed to meet their statutory obligation under Connecticut law to disclose exculpatory evidence." Pet. App. 8a. The complaint also alleged state law claims for false arrest, false imprisonment, negligent infliction of emotional distress, and intentional infliction of emotional distress.

Defendants removed the case to the United States District Court for the District of Connecticut. The district court granted summary judgment for defendants, holding that the officers' conduct did not violate the Constitution. Pet. App. 72a. The court stated that the evidence was insufficient to show that the tattoos on the videotape were legible enough to exonerate Russo prior to the tape's enhancement in January, 2003. *Id.* at 66a-67a.

3. The Second Circuit Decision. The court of appeals unanimously affirmed in part and reversed in part. Pet. App. 11a-27a. It upheld the district court's dismissal of Russo's claims based on his initial arrest because the officers had probable cause to arrest him based upon the cashier's identification of his photograph. *Id.* at 10a-12a.

With respect to the claim based on Russo's lengthy detention, the court stated that the evidence in the summary judgment record was sufficient to preclude judgment for the defendants because of the length of Russo's incarceration,

the ease with which the exculpatory evidence could have been checked, and "the alleged intentionality of [the individual petitioners'] behavior." Pet. App. 20a.

The court observed that "[t]he total 217-day detention here, or even the 68-day detention between Russo's arrest and DePietro's yielding of the tape to the prosecutor, plainly was prolonged rather than short and carried constitutional implications." Pet. App. 20a. The videotape was "an easily available piece of physical evidence" already in the officers' possession. *Id.* at 21a. Finally, "a reasonable jury could find that DePietro actively hid the exculpatory evidence." *Id.* at 22a. Also, the actions of DePietro and Officer Borona in "falsely describing the content of the videotape" and failing to investigate it to see if it was exculpatory "would readily support a jury finding of either intentional violation of, or deliberate indifference to, Russo's constitutional rights." *Ibid.* "DePietro's failure to follow police procedures with respect to the storage of the exculpatory evidence adds further evidence on the basis of which a jury could find deliberate indifference to Russo's incarceration and to his asserted innocence." *Ibid.*[1]

The court of appeals upheld the district court's grant of summary judgment in favor of the two other police officers. Pet. App. 23a-24a. It held that there was no evidence that these officers were on notice of Russo's claim of innocence based on his tattoos.[2]

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[1] The court of appeals pointed out that the district court's contrary determination rested in part on "speculation" that was "inappropriate on a motion for summary judgment." Pet. App. 4a n.3.

[2] The court of appeals also held that Officers DePietro and Borona were not entitled to qualified immunity as a matter of law because factual disputes precluded such a determination. Pet. App. 25a-26a. The court also reversed the district court's grant of summary judgment in favor the City of Bridgeport because the city had admitted that "'all individual defendants . . . acted toward the Plain-

ARGUMENT

Review by this Court of the court of appeals' interlocutory ruling plainly is not warranted. The court of appeals decided only that the district court erred in granting summary judgment. The case has been remanded for trial, at which the individual petitioners could well prevail either on the merits or on their claim of qualified immunity.

Moreover, as the court of appeals held and the other lower court rulings addressing similar claims confirm, this is an area of the law in which decisions are heavily fact-dependent. The differing results in the courts of appeals rest entirely on differences in the facts of the cases, not on disagreements about the applicable legal standard. There is no conflict among the lower courts.

The decision below also is entirely consistent with this Court's ruling in *Baker* v. *McCollan*, 443 U.S. 137 (1979). The Court there rejected the plaintiff's claim that his detention over a three-day holiday weekend violated the Constitution because the police officers did not investigate his claim of innocence until after the weekend was over. It indicated, however, that lengthy detention in the face of protestations of innocence could in particularly egregious circumstances violate the Constitution. The court of appeals correctly determined that the facts here are not sufficiently clear to establish the absence of such a violation as a matter of law.

Finally, petitioners are wrong in asserting that the court of appeals' decision threatens police officers with novel burdens that will hinder law enforcement. To the contrary, the

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tiff in accordance with custom, policy and practice.'" *Id.* at 26a (citation omitted). "We understand this to constitute an admission," the court ruled, "that, if officers DePietro and Borona are ultimately held to have violated Russo's constitutional rights, then municipal liability against the City will be appropriate as well." *Ibid.* The petition does not challenge these determinations and we therefore do not address them.

ruling below is wholly consistent with decisions rendered by other courts over the past fifteen years and petitioners have not shown that those decisions have given rise to a flood of litigation warranting this Court's intervention, especially in view of the interlocutory, fact-bound character of the decision below.

A. There Is No Conflict Among the Courts of Appeals.

Petitioner acknowledges (Pet. 11-12) that the decision below is consistent with rulings by the Fifth, Eleventh, and Ninth Circuits. See *Fairley* v. *Luman*, 281 F.3d 913 (9th Cir. 2002); *Cannon* v. *Macon County*, 1 F.3d 1558 (11th 1993); *Sanders* v. *English*, 950 F.2d 1152 (5th Cir. 1992); see also *Kennell* v. *Gates*, 215 F.3d 825 (8th Cir. 2000) (adopting same standard). These cases share each of the three key characteristics relied upon by the court of appeals in the present case.

First, the courts stressed that the plaintiffs had been detained for more than a few days. Although Russo's detention is by far the longest, the plaintiff in the Fifth Circuit case was incarcerated for fifty days. *Sanders*, 950 F.2d at 1158. The plaintiffs in the other cases were confined for twelve, four and six days, respectively. See *Fairley*, 281 F.3d at 915; *Cannon*, 1 F.3d at 1560-61; *Kennell*, 215 F.3d at 827.

Second, the exculpatory evidence was already in the hands of the police officers, just like the videotape here. In *Sanders*, which involved a series of robberies, several witnesses told the officer that the plaintiff was not the perpetrator and three other witnesses provided the plaintiff with an alibi for one of the robberies. 950 F.2d at 1162. In *Cannon*, the officer ignored the mismatch between the plaintiff's social security number (which was on her driver's license) and the social security number on the arrest warrant. 1 F.3d at 1560. In *Fairley*, the officers refused to check an available fingerprint database that would have confirmed that they had

mistakenly arrested the identical twin of the person named in the arrest warrant. 281 F.3d at 915. In *Kennell*, a fingerprint check demonstrated that the wrong person was in custody. 215 F.3d at 827.

Third, the evidence supported an inference that the officer's refusal reflected a deliberate decision to ignore the potentially exculpatory evidence, as the court of appeals concluded here. In *Cannon*, the officer had the plaintiff's driver's license, but recited in his arrest report the social security number from the arrest warrant. 1 F.3d at 1560. In *Sanders*, the police officer knew of but ignored the exculpatory evidence, in part because of the favorable publicity he had received in connection with arresting the plaintiff. 950 F.2d at 1162. In *Fairley*, the fingerprint database was readily available. 281 F.3d at 915 & n.1. And in *Kennell*, the court found sufficient evidence to support the jury's determination that the officer deliberately ignored the exculpatory evidence. 215 F.3d at 830.

Petitioner's allegedly conflicting decisions share none of these essential characteristics. In two of the cases—*Ahlers* v. *Schebil*, 188 F.3d 365 (6th Cir. 1999), and *Eversole* v. *Steele*, 59 F.3d 710 (7th Cir. 1995)—the plaintiffs were arrested and released and did not assert claims based on post-arrest detention. Indeed, such a claim would have been precluded by this Court's decision in *Baker*.[3] These cases simply do not address claims that in any way resemble the one in this case.

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[3] Petitioner points (Pet. 14) to language in these opinions stating that there is no duty to investigate further once probable cause is established. But those statements were made in factual situations in which the plaintiff could not assert a claim based on a lengthy detention. They therefore provide no indication of how those courts would rule in cases presenting facts such as those addressed by the court below and the Fifth, Eleventh, Eighth, and Ninth Circuits.

Petitioners' remaining decision—*Brady* v. *Dill*, 187 F.3d 104 (1st Cir. 1999)—is similarly inapposite. It involves a detention of *36 hours*. Moreover, there was no evidence of deliberate disregard by the officers of exculpatory evidence; to the contrary the court commented on the diligence of the officers.

In that case, an individual cited for drunk driving—David Buckley—"palmed himself off" as William Brady, providing an accurate address, date of birth, and social security number. 187 F.3d at 106. When Buckley later failed to appear in court, a warrant was issued in Brady's name, and Brady was arrested. Brady steadfastly maintained his innocence, and the police began investigating his claims. They discovered differences between the original arrest report and the new one. "Report No. 1 indicated that Brady had a tattoo and that his mother's maiden name was 'Kowalski,' whereas Report No. 2 noted no tattoos and listed the detainee's mother's maiden name as 'Kozloski.'" *Id.* at 107. The physical descriptions in the two reports also "did not correlate precisely." *Ibid.* After contacting the trooper who had originally arrested Buckley, the officers began to suspect a mistake, and tried to get him released. *Id.* at 106-07.

The First Circuit found no constitutional violation, noting that the initial arrest was supported by probable cause and that "the troopers went to great pains to gather information bearing on [Brady's] situation, tried to assist in securing his prompt release, and arraigned him before an impartial magistrate at the earliest opportunity." 187 F.3d at 109. Comparing Brady's thirty-six hour confinement to the three day detention in *Baker*, the court concluded that "it would take circumstances much more egregious than Brady's for us to conclude that a weekend detention of approximately thirty-six hours, accompanied by a concerted effort on the part of the police to secure the detainee's release, resulted in a wrong of constitutional dimensions." *Ibid.* The court noted, however, that it understood "*Baker* to leave open the possibility that

under extreme circumstances," a plaintiff may press a claim for prolonged detention. *Id.* at 115 "Depending upon factors such as the length of the detention, the behavior of the police, the source and quality of the information available to them, and the nature of the pretrial procedures afforded by local law, there may be circumstances so egregious as to ground a substantive due process claim." *Ibid.* Then, as examples of such beyond-the-pale conduct, the court cited a forty-one day detention and two thirty-day detentions. *Ibid.*

Brady is thus entirely consistent with the holding below. The short detention, and absence of evidence of deliberate misconduct distinguish the two decisions. And the First Circuit expressly recognized that facts such as those presented here would warrant the result reached by the court below. There simply is no conflict among the courts of appeals.

B. The Court Of Appeals' Holding Conforms To This Court's Precedent.

The Second Circuit's decision is fully consistent with this Court's jurisprudence. The holding below reaches only the most extreme deprivations of liberty: involving long incarcerations, readily available exculpatory evidence, and inexcusable conduct by police officers.

The Fourth Amendment prohibits "unreasonable searches and seizures" by state actors. U.S. Const. amend. IV. "By virtue of its 'incorporation' into the Fourteenth Amendment, the Fourth Amendment requires the States to provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty." *Baker* v. *McCollan*, 443 U.S. 137, 142-43 (1979) (citation omitted). So long as a judicial officer makes a probable cause determination "either before or promptly after arrest," there is generally no constitutional violation. *Gerstein v. Pugh*, 420 U.S. 103, 124 (1975).

In some situations, however, an extended detention initially supported by probable cause may eventually give rise

to a constitutional violation. This Court has stated that an individual arrested on probable cause "[o]bviously * * * could not be detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment." *Baker*, 443 U.S. at 144.

In *Baker*, Leonard McCollan "somehow procured a duplicate of [his brother Linnie's] driver's license, identical to the original in every respect except that . . . 'Leonard's picture graced it instead of Linnie's.'" 443 U.S. at 140 (citation omitted). When he was arrested on narcotics charges, Leonard posed as his brother, signing various forms with Linnie's name. After the imposter was released from custody, an arrest warrant was issued in Linnie's name. The innocent brother was stopped for running a red light and then hauled off to jail "over his protests of mistaken identification." *Id.* at 141. The officers compared Linnie's information with the data from Leonard's original arrest, and "understandably concluded that they had their man." *Ibid.* After three days spanning a holiday weekend passed, "officials compared [Linnie's] appearance against a file photograph of the wanted man and, recognizing their error, released him." *Ibid.*

Linnie brought suit under Section 1983 against the county sheriff (Baker), alleging false imprisonment. Linnie argued that Baker should have instituted an "identification procedure that would have disclosed the error." *Id.* at 141-42. This Court rejected Linnie's claim, holding that the initial arrest was supported by probable cause and that a mere three-day detention over a holiday weekend does not constitute a wrong of constitutional dimensions. The Court emphasized, however, that an initial probable cause determination does *not* necessarily absolve police officers from responsibility for mistaken arrests. Rather, whether a mistaken detention violates the Constitution is a fact-bound inquiry focusing on the length of the detention and the availability of the exculpatory evidence. *See Baker*, 443 U.S. at 145 (as-

suming arguendo that "mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of 'liberty . . . without due process of law.'") But this Court was "quite certain that a detention of three days over a New Year's weekend does not and could not amount" to a constitutional violation. *Ibid.*

The facts here are entirely different. Russo spent 217 days behind bars, more than seventy-two times longer than Linnie McCollan. The officers in *Baker* listened to Leonard's claims of innocence, compared his appearance with a photograph of the wanted man, and arranged his release after three days. The court of appeals in the present case determined that a jury could conclude that the officers intentionally concealed an exculpatory videotape in a desk drawer and falsely told Russo that the videotape showed a robber with body tattoos. The lengthy detention and evidence of egregious police conduct in this case plainly supports the court of appeals' determination that Russo established facts sufficient to justify a trial on his claim of a constitutional violation.

C. "Public Policy" Considerations Do Not Justify Review By This Court.

Petitioners also contend that review is warranted because the decision below will impose on police officers "personal responsibility and a continuing duty to exhaustively investigate defenses brought to their attention by the suspect, and to monitor the detention status of the suspect at all times subsequent to their arrest and presentment to judicial officials." Pet. 4; see also *id.* at 17.

But the Second Circuit's decision plows no new ground. As we have discussed, four other courts of appeals reached the very same conclusion in decisions rendered over the last fifteen years without drastic adverse consequences for law enforcement. The requirements of lengthy detention, exculpatory information in the hands of the police, and proof of

deliberate misconduct restrict liability to truly egregious situations. That carefully limited remedy imposes no burden on law enforcement generally.

CONCLUSION

The petition for a writ of certiorari should be denied

Respectfully submitted.

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